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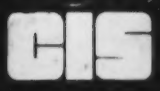

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# RENEWAL OF EXPIRING SECTION 8 HOUSING CONTRACTS

## HEARING

BEFORE A

SUBCOMMITTEE OF THE

## COMMITTEE ON APPROPRIATIONS

## UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SPECIAL HEARING

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# RENEWAL OF EXPIRING SECTION 8 HOUSING CONTRACTS

WEDNESDAY, SEPTEMBER 6, 1989

U.S. SENATE,
SUBCOMMITTEE ON VA, HUD AND INDEPENDENT AGENCIES,
COMMITTEE ON APPROPRIATIONS,
*Washington, DC.*

The subcommittee met at 10:35 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Leahy, Kerrey, D'Amato, Grassley, Nickles, and Gramm.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**STATEMENT OF HON. JACK KEMP, SECRETARY OF HOUSING AND URBAN DEVELOPMENT**

**ACCOMPANIED BY:**

**MARY BRUNETTE, ASSISTANT TO THE SECRETARY FOR POLICY AND COMMUNICATION**

**ALBERT KLIMAN, DEPARTMENTAL BUDGET OFFICER**

### OPENING REMARKS

Senator MIKULSKI. Good morning, everybody. The subcommittee will come to order. Today, the subcommittee meets to consider the Department of Housing and Urban Development's request to add over $400 million to their fiscal 1990 budget.

This is not requested in the President's budget, and its purpose is for renewing section 8 contracts. This would raise the cost of section 8 in 1990 from the administration's original estimate of $667 million to about $1.1 billion, as I understand it.

This request comes at a particularly difficult time for the subcommittee, already faced with severe shortfall in its allocation.

The subcommittee is now forced to consider a request to increase the appropriation for contract renewals by over 66 percent. The year 1990 is the first year where a large number of section 8 contracts are set to expire. Between now and the end of the century, as many as 3.6 million units will have to be renewed just to maintain the current, and what I believe to be inadequate, assisted housing stock.

That's quite a number—3.6 million units. And we have to make sure that we get an accurate count. Without renewal of these con-

tracts, what is already a crisis in affordable housing becomes an outright catastrophe. No renewal means tenants receiving section 8 subsidies under these contracts could lose all Federal housing assistance. That would force them to either become homeless, move in with relatives, or pay over 50 percent of their monthly income for rent.

None of these alternatives in my view, or the view of the subcommittee, is acceptable. Unfortunately, for the subcommittee, the Department's estimates on the need for renewals have fluctuated wildly over the last several months. And now, literally, at the 11th hour, the Department has asked for a budget adjustment of significant proportions without having a budget amendment submitted by the OMB in support of it.

In addition, this request is compounded by a serious lack of confidence in the accuracy of the Department's estimated numbers.

We wonder about the data base. We wonder about it because the number of section 8 units needing to be renewed in 1990 has fluctuated significantly over the last 6 weeks.

Before moving on the 1990 appropriations bill, I would like to set the record straight. Frankly, I must say I'm skeptical of the Department's revised plans for dealing with contract renewals in the 1990 budget. I question the accuracy of the data base that's used.

Officials of the GAO examined the Department's information systems they used in preparing the information for their revised plan.

They found virtually the same error rate, about 8 to 9 percent, in the computer system the Department used in preparing its new contract renewal plan. They also found similar errors in the computer system.

Just so my colleagues understand, HUD looked at this from two separate system management data bases; both had an 8 to 9 percent error rate, and it wasn't the same error rate.

Second, the Department's proposal for $1.1 billion came only after the Department violated the committee's reprogramming guidelines and used funds appropriated in 1989 for contract renewal activities to essentially renew about 13,000 certificates for a 2-year period.

Not only did the Department fail to receive the committee's approval for undertaking this activity, it violated its own principle of doing 5-year renewals for section 8 contracts in the process.

Third, I question whether the solution HUD is proposing to deal with its inaccurate estimates is more driven by a dollar figure, $1.1 billion, than the proper policy to do contract renewals.

That $1.1 billion was the number assumed in the budget resolution, but the budget resolution assumed a completely different set of starting points: 23,000 units needed for renewal, not 42,000; and renewal in-kind and in-term, meaning you renewed a 15-year certificate for 15 years, not for 5 years, as the Department now proposes.

So, with these questions in mind, we welcome Secretary Kemp before the committee.

We look forward to an honest and frank exchange this morning—in order to set the record straight, and more importantly, so that we know that our appropriations structures and funds the section 8 renewal program in a way that guarantees it properly serves those Americans and lays the groundwork for really grappling with

the enormous number of section 8's that have come due over the next several years.

Let me conclude by saying two things.

First, I would like to thank the Secretary and his Under Secretary and his Budget Office for coming forward in an honest and straight-forward way to grapple with this.

PRESIDENT'S DRUG PROPOSALS

Second, we also note, though it's different from this hearing, last night, our President, the President of all the people of the United States—came before the American people and asked us to wage war on drugs.

He essentially said, "We are at war." And he asked each one of us to become a soldier. I intend to be part of that volunteer army. And also very specifically outlined that he wanted to rid public housing of drugs. He asked for an appropriation of $50 million.

I would then say to the Secretary this morning and to his team, and I know I speak for the committee, that we need to sit down and see how we can come up with the money to meet the President's pledge and our commitment.

I see this effort as a point where Democrats and Republicans should not play price-tag politics. This is not the time to bite each other in the knee cap. For then, all of America will only limp.

So, I am ready on my part to do my effort, and we'll look forward to that.

Having set the stage for this conversation, I'd ask if you, Senator D'Amato, would have an opening statement.

OPENING REMARKS OF SENATOR D'AMATO

Senator D'AMATO. I thank the Chair.

Madam Chair, in the interest of time, I'm going to ask that my opening statement be submitted for the record as if read in its entirety.

[The statement follows:]

# STATEMENT OF SENATOR D'AMATO

Madame Chair, I am pleased to join you today as we discuss perhaps the most important issue that housing advocates face -- preserving housing which is affordable to low- and moderate-income families. The loss of this housing threatens hundreds of thousands of families around the nation.

The expiration of Section 8 rent subsidy contracts poses a major financial problem. Section 8 contracts were made for a 15 year period of time. These contracts are beginning to expire. In just the next two years, these contracts will cost more than $12 billion to renew. This additional $12 billion in budget authority is needed simply to tread water; even more money will be needed to provide owners with incentives not to prepay.

The renewal of Section 8 contracts is only one part of the problem. In addition, the prepayment of HUD mortgages threatens hundreds of thousands of families around the country. Without some federal remedy to keep the owners of these projects from prepaying and converting their projects to market rate, families may lose their home. Federal incentives will cost money, and although we are unclear of where this funding will come from, we do know that some amount of funding will be needed to address this problem.

In sum, the preservation of housing for low- and moderate-income families may be a costly one. I am pleased that this Committee is devoting its energy toward the

problem. As Ranking Member on the Housing Subcommittee, I look forward to working with you, Madame Chair, to devise a reasonable and effective solution.

This hearing has been prompted by recent events relating to Section 8 contract renewals. In the past few weeks we received new estimates about the cost of funding Section 8 contract renewals for next year. Initially HUD requested $667 million to renew the upcoming contracts. A few weeks ago HUD changed that request to $4.1 billion. This updated request came to Congress after the House had passed its VA-HUD-IA bill. That bill included $1.1 billion for Section 8 contract renewals and other Section 8 needs.

It is my understanding that HUD's request of $4.1 billion resulted from a reassessment of Section 8 needs. Instead of requiring funding for FY 1990, HUD needs funding at this point in time for contract renewals for two fiscal years, FY 1990 and FY 1991. This request was based on HUD's current renewal system which provides local housing authorities funding a year before the contract may be executed. I do not need to tell my colleagues of the difficult situation that this revised request creates for the Committee.

It is my understanding, however, that an agreement has been reached between this Subcommittee and the Administration. The Administration will only require funding for FY 1990 renewals and for those renewals in the first few months of FY 1991. This will amount to a total of $1.1 billion. I am pleased that a solution has been found to this

serious problem. I could not stand back and allow families to lose their home because Congress and the Administration could not find a reasonable solution to a budgeting and programatic issue.

If I understand the compromise correctly, the Administration is shifting its authorization of these Section 8 contracts into the next fiscal year. Although we are forced into this solution for the current year, we must all acknowledge that we are simply delaying the problem. By the beginning of FY 1991, we will have a very large number of contracts to renew, particularly because of this delay. It is my hope that the Administration will work with us to come up with the necessary funding to renew these contracts.

This problem will be with us for the next few years and it will continue to require funding. We must make a concerted effort to work in unison to provide Section 8 families the assurance of having affordable housing.

Thank you, Madame Chair.

Senator D'AMATO. I understand that there are a number of proposals that will help us reach a solution to this problem as it relates to section 8 renewals.

I was with you when we found to our dismay the problem that existed in the $4.1 billion figure. I hope that the talked-about compromise is one that we can institute and that we can begin to work our way out of that fiscal dilemma over the 1991-92 period, because it is going to be quite a fiscal situation to deal with.

I welcome the Secretary and I see that he has kept his renewed energy and his spirit in this incredible task that he's undertaken to make some sense and cohesiveness of the policies and the programs of HUD. I want to commend him for his straightforwardness in dealing with these matters and resolving some of the very difficult problems that he has inherited.

I thank the Chair.

Senator MIKULSKI. Senator Leahy.

OPENING REMARKS OF SENATOR LEAHY

Senator LEAHY. Madam Chair, I also, in the interest of time, will put in my opening statement.

Senator MIKULSKI. Without objection.

[The statement follows:]

# STATEMENT OF SENATOR LEAHY

Thank you, Madame Chair, for bringing to the subcommittee's attention the recent discovery of gross miscalculations in the number of Section 8 rental assistance contracts that will expire in Fiscal 1990 and early in FY 1991. I am deeply concerned over the extent of this problem and its discovery so late in FY 1989, and believe that this panel should do whatever is necessary, in conjunction with HUD, to develop a solution.

As you realize, the timing of this revelation, coming after the House has passed its VA-HUD appropriations bill, could hardly be less fortunate. An underestimate in excess of one billion dollars of the budget authority needed to renew vital rental assistance contracts is bad news for the the Administration, the Congress and especially, for the several hundred thousand low income citizens who receive assistance under the approximately 140,000 contracts in question.

I know that the Department's plate is already full, given the events of the past three months and Secretary Kemp's energetic commitment to not only re-organizing, but moving ahead. I commend him for his in-depth responses during these troubled times. But I urge my fellow subcommittee members not to overlook the serious consequences of the huge budget shortfall on renewal of the existing Section 8 contracts-- or certainly, the role the Department played in creating the problem in the first place.

Clearly, it is time for in-depth consultation between the Department, the Office of Management and Budget, and the Budget and Appropriations Committees of the Congress. And that consultation must be followed by swift action that directly addresses this mistake and resulting shortfall. We should all be well aware that if the Section 8 contracts are not renewed, the only alternatives for affected residents are very high rent levels (in many cases 50 percent or more of total incomes), doubling up with friends or family, or homelessness.

Senator Mikulski has informed members of the subcommittee that she has personally met with Secretary Kemp, Mr. Darman and Mr. Sununu on this pressing situation. I urge the Secretary to take a continuing personal interest in this major, immediate problem and coordinate the efforts of the White House, OMB and HUD to find a solution. Whether the proposed solution involves a revised budget request in the near future, a request for a supplemental bill early in 1990, or some other alternative, I hope that we can count on Jack Kemp to orchestrate the Administration's support for a workable legislative solution. This is one Department-generated problem that we now have a handle on and can correct before it hurts those who can least afford to be hurt. Thank you.

Senator LEAHY. I may even have to leave early, but I do want to note that I'm really impressed with Secretary Kemp's handling of the events and revelations of the past several months. And the commitment to moving ahead.

I've said this privately to him before, but I want to say to you publicly—that I feel President Bush is to be commended for appointing Mr. Kemp to a very difficult job. It would be nice for a Cabinet member at this table, to have a Department with absolutely no problems. He is not trying to hide the problems, and he is there with us.

I appreciate that very, very much.

Senator MIKULSKI. Senator Gramm.

OPENING REMARKS OF SENATOR GRAMM

Senator GRAMM. Madam Chairman, I'd first like to say that I look forward to working with you in dealing with this problem. It is a serious problem and I will assure you that I'm willing to do everything I can to try to come up with a solution that will allow us to fund all of the important programs that are under our jurisdiction.

And you can count on my full cooperation and support.

I'd like to welcome our friend today.

Jack, I think you're doing a great job. I'm proud of you. All those problems over there were simply waiting for somebody to come along to solve them. You might have gotten bored had everything gone smoothly.

I am proud of the work you are doing and anything we can do on this committee to make your job easier and to make you more productive, I'm willing to support.

Senator MIKULSKI. Senator Kerrey.

OPENING REMARKS OF SENATOR KERREY

Senator KERREY. Madam Chair, I have some questions I'll submit for the record.

Senator MIKULSKI. We haven't gotten to questions yet.

Senator KERREY. I have no opening statement.

Senator MIKULSKI. Senator Grassley.

OPENING REMARKS OF SENATOR GRASSLEY

Senator GRASSLEY. Madam Chairman, because of my schedule conflicts, I'm going to have to ask permission to submit some questions in writing. So I would like to have that permission now.

Senator MIKULSKI. Without objection.

Senator GRASSLEY. So I know that some questions that I have will be able to be answered in writing.

And I thank you very much for coming.

I, myself, offer to help in any way I can. I'll work with the Chair to help solve these problems, as cooperation between the Congress and the executive branch is necessary for the solution of those problems.

And we know that you have had more problems confront you as Secretary of your Department than any other new Secretary has

had. You had a tremendous burden just doing your job if you hadn't had these problems. And now you have more problems. Hopefully, not distracting you from the things that you have to do. But I'm sure, as human as you are, that that is the case.

And so you've been very up front in admitting problems, very open about what you're trying to do about them. And I hope you'll be as open with the interim reports on how you're coming because I think no one in the Congress considering the burden that you have is going to hold anything against you if you don't accomplish them overnight.

Hopefully, you'll be able to do it very speedily, but it's a tremendous problem that you have. And we thank you for how you have taken on that burden.

Senator MIKULSKI. Thank you very much, Senator Grassley.

Secretary Kemp, why don't you go on with your testimony.

STATEMENT OF SECRETARY JACK KEMP

Secretary KEMP. Thank you, Madam Chairman, for your opening comments, and for those of your colleagues on the committee. For a minute there, I was beginning to recall the famous words of H.L. Mencken, the famous iconoclast, the newspaper man who said: "To every human problem there is a solution, which is simple . . ."

I think that is not true in this case. I think there are solutions and, while there are problems, to be sure, that we are wrestling with at HUD, I want you to know, Madam Chair, as well as your colleagues on this committee, both Democratic as well as Republican, that I have approached this position and this job from a sense of optimism and a sense of candor, hopefully, that has been met certainly with equal candor from this committee.

And I'm going to say to you, as I've said in your office and to the other members of this very important committee, that you have my complete and open pledge, publicly and privately, to do everything I can to let the chips fall where they may to clean this up and to work with you.

ANTIDRUG EFFORTS

And before I get into the expiring contracts under the section 8 program, I would like to thank you on behalf of the administration for enlisting in this army, because it's not a Bush antidrug effort, it is an American antidrug effort.

And I ask it be approached that way. We'll have our differences of opinion along the way but unity, as I've often said, does not require unanimity or uniformity. And I think there is strong unity in this country, particularly with you, Madam Chair, and all the other members of this committee, to do something about public housing.

I've said many times: If we can help those residents who are not using drugs, who are not doing drugs, who are not abusing drugs, who are not dealing drugs to deal with this problem, I feel that we can make an enormous positive impact upon public housing in America in terms of using the residents themselves, the tenants, to clean up, clean out, and make a substantial improvement in the living conditions of those people that we both want to serve.

So I appreciate your strong commitment, Madam Chair. You and I were in Baltimore together, and I've been in other parts of this country with members of this committee. And that $50 million that the President pledged, or the $75 million out of the House committee, whatever it ends up, you can be assured, Madam Chair, that we want to work with you on this committee to make sure that those public housing residents have a chance to raise their children in a decent and drug-free environment.

I would be remiss if I did not thank you, as well as Senators D'Amato and Moynihan and many others who are helping to provide us some flexibility with regard to our lease and grievance procedure, which, as you know, Madam Chair, allows us some flexibility in waiving cumbersome HUD grievance procedures so that States that have due process can help evict those who are abusing, dealing, trafficking in drugs in public housing.

So that just should go without saying. I wanted to reiterate my pledge.

### HUD COMMITMENT ON CONTRACT RENEWALS

Madam Chair, it's very important that we get off on the right foot in these hearings. I listened very intently to your opening comments, and I want you to know, having said this in private—not private, but in your office with you and your staff, let me say it publicly for the record once more—that the so-called renewal for 2 years of section 8 contracts I am going to interpret as a simple extension to buy us some time.

You still have my complete commitment and that of the Bush administration for fulfilling our obligation to extend and renew those section 8 contracts.

That is the purpose of my being here today, and I want to discuss this as openly as you have raised these questions.

It's an important issue and it's one that the Bush administration wants to let everybody know, both in Congress as well as those who are getting assistance from the Federal Government, that this administration along with this Congress, and I know this committee and I know your personal pledge, Madam Chair, that we are committed to preserving this critical housing assistance to people in need. That we want to guarantee that they will receive the help.

And for those who still need help, we are not going to back off an inch from our commitment at HUD or in this administration to completely renew those expiring contracts.

The fact that there is more budget authority needed I will address in my remarks, but I want to make that very clear for the record and up front that we want to work in tandem with you and this committee to make sure that that pledge is kept to the needy people of this country.

### CHANGE IN RENEWAL ESTIMATES

When I testified, Madam Chair, before your subcommittee on May 15 of this year, I expressed to you my commitment and that of this administration to protect those families in need who have received housing assistance through the section 8 program.

I indicated at that time that our budget proposed $667 million, as you mentioned, to replace what we thought was an estimated $24,000 a unit, which would expire in 1990.

We said we would commit ourselves to renewing those expiring contracts in 1990 and in future years in order to maintain the current level of assistance for those needy families and households.

That unflagging commitment is made here today. We indicated in our previous testimony that our estimate of the expired units needing replacement might be revised.

You and I talked about this, Madam Chair, pending an ongoing review. Since I last appeared before the subcommittee, it's become clear to us at HUD that, as you mentioned, $1.1 billion will be needed in 1990 to cover all the contracts that were at risk.

We talked about our data base and I discussed this with you. Our initial budget, Madam Chair, assumed that the funding for the expiring contracts would not be required until the fiscal year in which the contracts had actually expired.

The contract is now coming due and it's clear to us that administrative processing time is needed prior to the expiration so as to ensure that new contracts are in place for those families.

Unless the timing for replacement funding is correct, there would be a lapse. And we don't want that lapse to occur. For contracts that are executed at the start of the fiscal year, the renewal and replacement of funding is needed for the year immediately preceding the expiration so as to allow the customary and necessary funds, 2 months for contract processing.

### CURRENT RENEWAL PROPOSAL

Madam Chair, our proposal is as I mentioned to you and to this committee to provide for a 5-year contract renewal for those contracts which expire in October and the first part of November of our fiscal 1991 year.

The goals of our proposal are straightforward, I believe. First, we are, as I said, committed to providing sufficient budget authority and that's what we're talking about here today, to ensure the uninterrupted housing assistance to low-income families in America.

Second, as I've mentioned to you and to this committee, we intend to ensure that we have adequate funds to enable us to meet our commitment to providing those 5-year funding of all contracts that expire in fiscal year 1990.

We believe that our current proposal is responsible. It stays within the limits established in the congressional budget resolution and ensures that we can commence an orderly process of renewal in 1990.

While we could have extended expiring contracts for a lesser term and stayed within the budget authority we initially proposed, to have done so, as you pointed out, Madam Chair, would have compromised our commitment to that 5-year contract term.

The approach that we are taking does not, in my view, Madam Chair, significantly affect our budget projection for expiring contracts for the years following fiscal year 1990.

We at HUD have consulted with the leadership of the public housing authorities on the mechanics of our proposal. We've tried

to incorporate their advice. I have personally written the 3,300 PHA's in the country about this issue.

We have reaffirmed to them our intention to make this contract transition smooth and to fund, as you pointed out, all of these new contracts for the full 5-year term.

### DATA PROBLEMS AT HUD

Now it's been a difficult exercise, as you pointed out, in budget forecasting. It revealed, as we found out, that our data system at HUD warranted an overhaul. These are some of the problems that were alluded to in your opening statement.

We need more direct and dependable links in our automated accounting system. All transactions in the field need to be regularly recorded in a centralized accounting repository.

I've instructed Al DelliBovi, who is here today, along with Mr. Kliman and other key members of our team at HUD, I've instructed Al to place a high priority—the highest priority—on correcting the deficiencies in our data system that we found when we took over HUD. And in the estimating procedures which have led to an underestimate, as you pointed out to us.

We intend to provide this committee, Madam Chair, and provide the Congress with as accurate information as we can possibly determine which is needed to assess future budget funding requirements.

We expect that the Department's overall program for reforming the accounting and financial management procedures will accelerate an improvement of the data base, the data gathering, and thus support a far better precision in budgeting.

But, while these and other enhancements can improve HUD's outdated accounting system, budgeting will continue to be, albeit less so, imprecise, as you pointed out in your opening statement.

Amendment funding is affected by a lot of factors and they vary from region to region, city to city. The improved data collection system will provide useful summary information, more quickly allowing us to better assess trends in these problem areas, but with budgets being prepared, Madam Chair, 6 months in advance of their presentation, and sometimes more than a year prior to enactment, a precise estimate is and has been difficult to achieve.

Notwithstanding that, Madam Chair, I pledge today, as I have to you personally as part of my relationship with your subcommittee, to maintain the type of regular communication with you and your staff on this committee that you would expect of the Secretary of HUD.

### FUNDING PRIORITIES ON 1990 APPROPRIATIONS

I know you're getting ready to mark up the VA/HUD and Independent Agencies appropriation bill for fiscal year 1990. I want to reiterate my strong support for the President's funding proposals for HUD.

There are three high priorities. I won't go into them in detail, but just allude to them or briefly mention them.

REDUCING HOMELESSNESS

We've requested $50 million for developing and expending some innovative approaches to reducing homelessness in America. It's important to us, Madam Chair, that this $50 million be used to go beyond just caring for homeless people, to helping get these individuals and families out of some of these hopeless situations such as exist at the Capitol Inn Motel and other welfare hotels throughout the country.

HOMEOWNERSHIP

Homeownership has been a top priority, as you and I have discussed; it certainly is of the President's and mine and HUD's.

Our 1990 budget proposes $44 million to initiate a pilot program to provide new ways of incentivizing homeownership for low-income people, something, Madam Chair, that you have had a strong interest in, along with the Nehemiah Program, as has Senator D'Amato.

WINDFALL SECTION 8 PAYMENT COURT DECISION

I want to skip over to the end of my prepared testimony, Madam Chair, which you have graciously allowed to be placed in its entirety into the record, and just for a moment make one final comment that needs to be made about the recent ruling by the Ninth Circuit Court of Appeals on the *Rainier View* case, which requires us at HUD to make windfall section 8 payments to project owners in those jurisdictions to support arbitrary rent increases based not only on market conditions but on some form of an automatic adjustment.

The decision is costly. I think it was a mistake. It's going to cost the Department $150 million in the Ninth Circuit alone and stands to cost HUD—and HUD of course is the taxpayer of America—over $500 million if applied generically across the board.

In the interest of preventing a serious budgetary problem which would adversely affect other important programs, I would urge that we together take some affirmative effort, immediate action to support HUD's legislative proposal to help resolve this issue.

I appreciate your personal interest, your political interest, and the interest of the members of this committee.

I look forward to working with you in the future as we have in the past. I want to once again thank the members of the committee for their very gracious comments about the efforts we are trying to make to make HUD an agency of which we all can be proud.

PREPARED STATEMENT

Senator MIKULSKI. Does that conclude your testimony, Mr. Secretary?

Secretary KEMP. It does, Madam Chair.

Senator MIKULSKI. First, your entire testimony will be submitted into the record.

[The statement follows:]

# STATEMENT OF SECRETARY KEMP

I appreciate having the opportunity to appear before you to discuss HUD's plan for replacing expiring subsidy contracts under the Section 8 program in Fiscal Year 1990. In addition, as you prepare your 1990 Appropriations bill, I want to reiterate our program priorities for the coming year.

The subject of this hearing is an important one. The Section 8 program is the principal, vital subsidy the Government uses to provide housing for low-income families. Our commitment to renew this huge universe of expiring Section 8 subsidies is a significant policy statement by the Federal Government -- both the Administration and the Congress -- about how committed we are to preserving critical housing assistance, in essence, as a guarantee to those who have received and still need help.

Madam Chair, I want there to be certainty for Section 8 families that the stream of assistance under these subsidy contracts will continue as it always has. Under no conditions will this assistance be interrupted and by no means will any family lose their home as a result of these contract expirations.

When I first testified before your Subcommittee on May 15 of this year, I expressed to you the Administration's commitment to protecting families in need who already receive housing assistance through the Section 8 program. At that time, I indicated that our budget proposed $667 million to replace an estimated 24,000 units which expire in 1990 with new contracts and that we would continue refunding expiring contracts in future years in order to maintain current levels of assistance for needy households. I want to reiterate that firm and unflagging commitment to refund all expiring contracts for a term of five years.

We also indicated in our previous testimony that our estimates of the number of expiring units needing replacement was likely to be revised, pending our ongoing review. Indeed, since I last appeared before the Subcommittee, it has become clear that approximately $1.1 billion will be needed in 1990 to cover all contracts at risk.

While better data improved our estimate, we also needed to correct some faulty program assumptions. Our initial budget assumed that refunding for expiring contracts would not be required until the fiscal year in which the contracts actually expired. As contracts are now coming due, it is clear to us that administrative processing time is needed prior to expiration to ensure that new contracts are in place. Unless the timing for replacement funding is correct, temporary lapses in assistance may occur. For contracts that are executed at the start of a fiscal year, renewal or replacement funding is needed in the year immediately preceding expiration to allow the customary and necessary one to two months for contract processing.

Madam Chair, our proposal is to provide for five-year contract renewals for those contracts which expire in October and the first part of November of Fiscal 1991. The goals of our proposal, Madam Chair, are simple and straightforward. First, we are committed to providing sufficient budget authority to ensure uninterrupted housing assistance to low income families. Second, we intend to ensure that we have adequate funds to enable us to meet our commitment to providing five year refunding for all contracts that expire in fiscal 1990 and beyond.

We believe that our current proposal is a responsible one, because it stays within the limits established in the congressional budget resolution and ensures that we can commence an orderly process of renewals in 1990. And while we could have extended

expiring contracts for a lesser term and stayed within the budget authority we initially proposed, to have done so would have compromised our commitment to a five-year contract term. I would add, Madam Chair, that this approach does not significantly affect our budget projections for expiring contracts for the years following Fiscal 1990.

We have consulted with the leadership of our PHAs on the mechanics of our proposal and incorporated their advice and comments. In addition, I recently wrote to all the PHAs to reaffirm our intention to make this contract transition smooth, and to fund all new contracts for a full five-year term.

Madam Chair, this particularly difficult exercise in budget forecasting has revealed that data systems at HUD warrant significant overhaul. Specifically, we need more direct and dependable links in our automated accounting systems. All transactions in the field need to be regularly recorded in centralized accounting repositories.

I have instructed our management team, under the direction of Under Secretary Al DelliBovi, to place the highest priority on correcting the deficiencies in the data systems and in the estimating procedures which led to the current underestimate. We intend to provide to Congress the accurate information which is needed to assess future budget funding requirements. And we expect that the Department's overall program for reforming accounting and financial management procedures will accelerate the improvement of data gathering and thus support far better precision in budgeting.

But, while these and other enhancements greatly improve HUD's distressingly outdated accounting systems, budgeting will continue to be, albeit less so, an imprecise process. Amendment funding,

for example, is affected by so many factors, which vary from region to region and city to city, that the best systems could not represent annual needs presently in a timely way. The improved data collections systems will provide useful summary information much quicker enabling us to better assess trends. But with budgets being prepared six months in advance of their presentation and sometimes more than a year prior to enactment, precise estimates will be difficult to achieve. That notwithstanding, Madam Chair, I pledge as part of our relationship with your Subcommittee, to maintain regular communication with you and your staff on changes to our funding needs and activities.

Madam Chair, I know that you are preparing to mark up the VA, HUD, and Independent Agencies Appropriations Bill for FY 1990, and would like to take this opportunity to reiterate my strong support for the President's HUD funding proposals. In particular, there are three high priorities which deserve special attention.

First, we have requested $50 million for developing and expanding innovative approaches to reducing homelessness in America. Madam Chair, I am determined to go beyond just caring for homeless people, I want to get these individuals and families out of hopeless situations -- the shelters and the welfare hotels -- and into permanent housing; and, as the ultimate goal, into conditions of economic and social independence. Our proposal, funded through the CDBG program, would permit states and localities, in cooperation with non-profit service providers, to conduct a variety of programs aimed at accomplishing this goal. Multi-service programs such as the House of Ruth in Washington, D.C. and "resource banks" like Shelter Partnership in Los Angeles, California reflect innovation in providing assistance to the homeless that our proposal is intended to nurture and expand. Madam Chair, we need to cultivate the good ideas like these and move the homeless population from just being "cared for" to

independence and the part of America's mainstream. I urge adoption of this new $50 million initiative.

Secondly, Madam Chair, you know that homeownership is a top priority of mine and our 1990 budget proposes $44 million to initiate a pilot program to provide new ways of incentivizing homeownership for low-income families. Our proposal would encompass strategies ranging from preserving existing low-income housing to expanding other homeownership opportunities. It is my belief that tenants should be afforded the opportunity of homeownership as a means of dealing with preservation of the low-income housing stock.

Finally, while the House Bill increased funding for many programs, it did not take the next step of restoring funding for the staffing necessary to manage those programs. I urge you, Madam Chair, to match programs with staffing resources and permit the Secretary to allocate staff within the Department on the basis of need and in a way that enables us to fully implement the reform actions which are now being instituted.

In addition to the above priority requests, there are several others, about which I wrote to you and Senator Garn, that I would hope will be addressed in the FY 1990 Appropriations Bill.

I would like to express my support for funding the full request for HUD's Office of Policy Development and Research (PD&R), at $21.4 million, to adequately support the other programs offices at HUD in connection with both the research requirements and needs imposed by the Congress and those which enable the Secretary to set a proper course for housing, economic development and civil rights policy. The funding level requested for FY 1990 is the minimum amount necessary to satisfy the demands of Congress and begin to establish a foundation for waging war on poverty through the programs at HUD.

In addition, I strongly recommend your adoption of the President's proposal for funding FHIP. In doing so, I also request specific language to extend the program's authorized demonstration. Unfortunately, questions surrounding the critical testing "guidelines" associated with the newly authorized program were not resolved until very recently. The consequence is that the program's demonstration, not ready for commencement, faces a sunset of September 30, 1989. While HUD's General Counsel affirms the availability of the 1989 FHIP appropriations through Fiscal Year 1990, individuals pursuing Title VIII complaints risk litigation unless there is specific legislative authority to continue the demonstration until September 30, 1990. We have asked the Housing Subcommittees of both the Senate and House Banking Committees to support the insertion of such authorizing language in the appropriations bill.

Also, recent ruling by the Ninth Circuit Court of Appeals on the Rainier View case requires HUD to make windfall Section 8 payments to project owners in that jurisdiction to support arbitrary rent increases based not only on market conditions, but on automatic adjustments. This decision is already costing the Department $150 million in the Ninth Circuit and stands to cost HUD over $500 million if applied nationwide. In the interest of preventing a serious budgetary problem which might adversely affect other important programs, I urge you to take affirmative action to support HUD's legislative proposal to resolve this issue.

Madam Chair, I appreciate your personal interest in these matters and the time you have spent on them, including meetings with me on the expiring contracts issue. I look forward to our continued cooperation on all matters affecting the housing needs of American families.

SECTION 8 CONTRACT RENEWALS

Senator MIKULSKI. But to just make the committee aware, we will follow the 10-minute rule for questioning. The Chair will also abide by the 10-minute rule.

Secretary KEMP. If I might, I don't need to introduce you to Al Kliman. He's been here many times before. And you've met Mary Brunette. Mr. DelliBovi, the Under Secretary, who has recently been confirmed, is also with me, as well as other members of my staff.

But I'll do the very best I can.

Senator MIKULSKI. Mr. Secretary, first of all, I want to thank the administration and your very clear testimony that you are committed to contract renewal at the rate of 5 years. I think this is an agreement that we've reached and it shows that, while we are grappling with these technical problems which have enormous policy significance, we're not going to penalize the poor and we're not going to penalize the people who are dedicated to helping the poor, be they public or private partners in this.

That's No. 1. No. 2, yes, we are grappling with an issue relating to a significant shortfall. But I want to reiterate here that I view these as problems of management, data base, communication. I want to be very clear with members of my committee and those who are interested parties present, I do not view this as fraud.

I do not view it as malfeasance. And I think that we've talked and we've taken steps to make that clear.

Third, I want to say something else. The questions that we'll be asking will probably be tedious and technical. These don't make headlines. They don't make by-lines, but they sure make bottom lines for the poor because, unless we can help you, work with you to get HUD's infrastructure in line, we cannot have accurate estimates of what we need to do to truly help the poor help themselves.

So I just want to say that because right now there's a fad in this town that if there's guts and glory to be found, it's in finding ugly things under rocks.

We're not up here to do this today. And we're going to ask the committee to bear with us on some of these technical questions. We're talking about between now and the year 2000 3.6 million contracts expiring. We've got to have the numbers straight so we can get our budget straight.

My questions are going to go into issues really related to the management data base and some of these other kinds of things.

PROBLEMS WITH DATA BASE

Let me first go to this issue of the data base.

Mr. Secretary, in your original testimony, when you came to talk about 23,000 contracts, you confused the committee with what's up now. It's almost double that number.

My question is: You are the only data base that we have to operate on. You and the GAO manage it. The CBO has got to have it. We have to have it. We have to know their accuracy.

I understand from GAO, based on HUD's own information, that in the new system, the assisted housing automation system has

about the same error rate as the old system, which is about 8 or 9 percent.

Could you tell us, since the new improved system doesn't seem to be much more accurate than the old system, how can we have confidence in the numbers that we have? Or are we just taking a qualified guess?

If we are, we just need to know that.

Secretary KEMP. That's a fair question. I want to say that I appreciate the position that we find ourselves in here today.

Let me just again, since you have made it very clear to the Nation's poor that you appreciate the commitment of this administration along with the Congress to fully commit itself to 5-year renewals, let me remind people that this is budget authority that we're talking about. It does not increase outlays a penny.

And that not a family is going to be affected adversely. That is my commitment to you, Madam Chairman, added to the Bush administration's commitment.

And I know it's your intent. So that's an important thing to get on the table.

The data base. How can I assure you that once and forever ad infinitum that there will not be any problems?

I can't say that here today. All I can tell you is, sincerely as I possibly can bring to this meeting, that we are working with all of the intellectual as well as physical capital at our command to provide you with an estimate of where we thought we were, where we are today, how our commitment is applied to this, and whether or not we can say that we've got it totally assured that it will never happen again, I can only give you the assurance that if it shows up, we are willing to come before this committee and face up to that fact.

I'm going to ask Mr. Kliman to at least address the issue of our sense of confidence about the future.

Senator MIKULSKI. Before we go to Mr. Kliman, let me say this. The 8-percent error rate is an unacceptable rate, particularly when we start dealing with the magnitude of the numbers.

We understand in your testimony you've instructed Mr. DelliBovi to undertake a thorough review of the automated management systems and to make improvements.

When is the due date for the DelliBovi computer performance due?

Secretary KEMP. There is no certain date that I have placed on this other than to get hopping and make it as high a priority as we have at HUD to make sure that we fulfill our commitment not only to you but also to those people who rely upon us.

And 8 percent is, I agree with you, it is something that is totally unacceptable and we do not have a tolerance for those mistakes.

All I can pledge to you is that we are moving as rapidly as we possibly can, and I hope I have given evidence by coming up personally to your office.

### EFFORTS TO FIX DATA SYSTEMS

Senator MIKULSKI. I believe you. You do know that we function best when you have goals and due dates.

Can I ask Mr. DelliBovi what he estimates is the time it would take to at least have some preliminary results?

I'm sure he's going to be asking for money for that.

Mr. DelliBovi, you've been charged with this responsibility. How long do you think it will take so that we can again be ready to work with you?

Mr. DELLIBOVI. Madam Chair, we don't have a timetable at this point because a timetable would relate to a cure of the disease, and we are still discovering some of the symptoms.

Let me just say that the 9-percent estimate that GAO identified, one of the good things is that they are now seeing that we are undershooting rather than overshooting the target.

We are attempting to unravel these master contracts that have all of the various contracts of each year's vintage in there. And it is not until we could complete all that unraveling that we know all the symptoms, so that we can with any certitude talk about when we're going to cure the problem.

Senator MIKULSKI. So you're still doing kind of a CAT scan of the reporting systems to you.

Is that correct?

Mr. DELLIBOVI. That's correct.

Secretary KEMP. Madam Chair, can I have Mr. Kliman also address this issue?

Senator MIKULSKI. Yes, you can. I just wanted to see where we were heading with due dates.

Mr. KLIMAN. A large part of the problem, Madam Chair, is that our accounting systems are in pieces and not interconnected—not integrated.

We have in this budget before you, the fiscal 1990 budget, as part of the administrative expenses account the beginning of our contract work on a thing called the HUD integrated information processing service.

Senator MIKULSKI. Mr. Kliman, you can submit for the record a description of the accounting system. Could you get that?

[The information follows:]

HUD INTEGRATED INFORMATION PROCESSING SERVICE (HIIPS)

**WHAT HIIPS IS:**

- HIIPS is a consolidated automation services contract through which the Department will obtain all of its computer operations and related support for the next decade.

- Under HIIPS, a single vendor is responsible for ensuring that all equipment and supporting services are fully integrated.

- The HIIPS vendor will not be responsible for developing application software in support of HUD programs.

**WHAT HIIPS REPLACES:**

- HUD'S existing ADP operations are badly fragmented among different kinds of equipment and different geographic sites:

  * Mainframe computers utilize both IBM and Unisys equipment and are located in six different sites.

  * Two nationwide telecommunications networks are in use, using Honeywell and Unisys equipment.

- Existing operations are now provided through several major contracts which are expiring and must be replaced, as well as a much larger number of support contracts and purchase order arrangements. HUD is presently responsible for ensuring that the equipment and supporting services provided under these contracts are fully integrated.

**WHY HIIPS IS BEING DONE:**

- HIIPS will facilitate the integration of the Department's various financial management and other systems, in order to ensure consistent and accurate data to support program managers. It will also allow the Department to develop a single accounting system, in accord with the requirements of OMB Circular A-127.

- HIIPS will eliminate the fragmentation associated with HUD's current mainframe and telecommunications environment by:

  * Consolidating all of the Department's ADP operations in a single computer facility;

  * Providing a single point of responsibility for system interrogation and facility management; and

  * Consolidating all teleprocessing support into a single teleprocessing network.

- HIIPS will provide state-of-the-art facilities and equipment and make it possible for the Department to respond more easily to changes in technology.

- HIIPS will accommodate the anticipated growth in HUD's computing and teleprocessing workload for the next decade.

**WHEN HIIPS WILL OCCUR:**

- Contract award is scheduled for late 1989 or early 1990.

- A 30-month development/conversion process will begin immediately after contract award.

- HIIPS will be fully operational in late 1992.

INTEGRATED INFORMATION PROCESSING SERVICE

Mr. KLIMAN. It will take approximately 3 years to build us an integrated system. We are at the beginning of that right now. We cannot produce for you an integrated system tomorrow or next year. It will take a minimum of 3 years.

Senator MIKULSKI. That's a blockbuster, but thank you for at least laying it out.

Secretary KEMP. Let me put that in perspective.

Senator MIKULSKI. May I finish, please?

We now know that it's going to take you 3 years. I'm not arguing with that. My followup is:

Will you then go to the HUD field offices to verify and correct data system information prior to submitting the 1991 renewals?

Are we going to go to the field and do it that way?

Secretary KEMP. Emphatically, yes.

Senator MIKULSKI. Is that what you're going to do?

Secretary KEMP. Yes. I'm not trying to take this beyond where you want it to go. I would just like to add to what Mr. Kliman said.

When he talks about 3 years, he's talking about a fully integrated accounting system that would, at least throughout the 1990's, give us the type of in the less-than-perfect world perfectability to this problem that we would choose.

But I want you to know that this is an ongoing evolutionary process, and I don't want people to get the impression that we're going to have to sit around and wait for 3 years. We are making corrections as we go.

And if the GAO would tell us exactly what they have in mind here, it would also help us make the type of corrections that we're willing to make.

But you need to know that we are going to move rapidly, expeditiously and with dispatch to give you the information we have.

And I think a cooperative effort will make significant progress notwithstanding the fact that 3 years won't give us Nirvana.

DELAYS IN GETTING CORRECTED DATA

Senator MIKULSKI. We're not looking for Nirvana. We're looking for a reduced error rate. When you say, Mr. Secretary, that it's hard to do this because it takes up to 6 months, planning your budget 6 months ahead, we're aware of that. But your own Director of Assisted Housing waited until May 4 to crosscheck the data base for the 1990 budget. May 4, exactly 11 days before you were scheduled to come in and testify.

I consider that an unacceptable management procedure. If there seemed to be flaws in the system, and we acknowledge that, that's a no fault. But, still, the Director of Assisted Housing didn't call the regional offices until May 4. I find that unacceptable.

That's why I'm saying, while we're waiting for a computer system, are there essentially going to be people on the phone saying what we need to do?

Secretary KEMP. It was so unacceptable to me as well that I rushed to your office and talked about it quite candidly.

Al Kliman, do you want to talk about that some more?

Mr. KLIMAN. Madam Chair, as far as the Director of Assisted Housing waiting until a specific date, I'm not sure exactly what that is. But, in terms of dates, you are relatively correct.

One of the big problems that our technical people have faced in this is getting the computer systems that are involved to speak to us. They're very technical and complicated. However, it was only approximately in May that the data, in effect, became accessible out of the computer systems, which allowed us to be able to develop these corrected estimates.

What was in the mind of the Director of Assisted Housing and whatever they were looking at, I don't know, but May was approximately the time when we started to be able to access this data in a much more efficient manner.

Senator MIKULSKI. Mr. Kliman, I don't want to hear that, and I'll tell you why I don't want to hear that.

We know when those contracts were made in the 1960's and the 1970's. There needed to be an anticipation of that.

People within the bowels of HUD know that there is an administrative mess which is attempting to be straightened out.

So, don't start doing that to me, and don't start doing that to the committee. Let's answer the question straightforwardly. Let's move on the issues and try to respond.

POSSIBLE LATER SUPPLEMENTAL

Now, there is a question; we're going to operate with the best estimates. I think there's been a very good faith effort to come up with that, but I need to have your firm assurance that, if we are off, you'll come in for a request for a supplemental appropriation rather than funding it out of the existing programs that we're going to be funding.

Secretary KEMP. You have my assurance that we'll come here immediately and discuss the best way to resolve this issue at any time, as I've demonstrated just a few weeks ago.

So, as I understand it, it is not required, since OMB and the administration fully support this level of budget authority that is needed, that I am correct, I hope, in assuming that we don't need to ask for a budget amendment on this. There's enough budget authority to take care of this.

Senator MIKULSKI. I hope you don't.

Secretary KEMP. But I'll come here first.

Senator MIKULSKI. We call it a supplemental.

My time is expired. The Chair yields to the Senator from New York.

Senator D'AMATO. Madam Chair, may I just make an observation as it relates to the Director of Assisted Housing.

My committee, the Banking Committee, shares the responsibility in seeing to it that we had a Director in place, a lot sooner. That Director was not appointed until—I think in July. I'm talking about the Assistant Secretary, Secretary Fitts.

The fact is the Secretary has inherited an incredible situation and I think staff is aware, and I think most of us are aware of the prodigious work it's going to take to set into motion a system that

has been neglected for many, many years, where there was not the accountability that is necessary.

And I have confidence that the Secretary and his people are going not continue to work on that system prior to getting the kind of comprehensive system that we all look forward to.

ANTIDRUG EFFORTS

I'd like to ask Mr. Secretary, getting back to something that you raised initially, and that is your commitment to work with the President as it relates to the scourge of drug addiction and how do you see the President's proposals being integrated? And what will you be doing as it relates to that in our public housing section?

Have you begun to develop various programs to deal with that? Because I know that is something you feel very strongly about.

Secretary KEMP. I'd appreciate that. Very briefly, Senator D'Amato, we have begun to implement a 10-point program, which is working with the public housing authorities, working with the tenant-based organizations, working with the residents themselves, involving the various local units of government from the police to municipal leaders to make sure that (*a*) there is more security; (*b*) there is a comprehensive plan to improve and rehabilitate the existing units, to provide lighting and identification, and to have an onsite authority, whether it's police or DHA, to give some degree of security to the people, to undertake a comprehensive approach that has been working not only out here in Kenilworth Park but in Chicago.

The chairman of the PHA in Chicago talked about how Rockwell Gardens had been cleared. There are amazing things that have been done, and I want you to know that I am confident, as I said this morning on television, and as I would say to this committee, that we can make an enormous step in the right direction in public housing by making sure that we evict promptly those who are dealing and doing drugs.

ANTIDRUG EFFORTS OUTSIDE OF PUBLIC HOUSING

I have submitted regulations that I would hope would clear very soon that would allow us to remove from the section 8 certificate process people, families who have been abusing, or individuals.

And we also plan to use in these gray areas CDBG's, housing subsidies, et cetera. And I think we can make a lot of progress. I really do. I know you want to.

Senator D'AMATO. Mr. Secretary, when you mentioned the section 8 changes, I take it that you have discovered that some of the courts are giving difficulty, or it is not clear whether or not you have the kind of ability to evict those section 8 people who are in there under section 8 certificates.

Is that correct?

Secretary KEMP. I'm sorry?

Senator D'AMATO. In other words, you mentioned that you'd be asking for additional authority in relation to those tenants when they're in section 8.

Have you run into and encountered some difficulties in terms of evicting those who are presently in section 8?

Secretary KEMP. It needs a new regulation. We have submitted that. And I'd like to submit it for the record at an appropriate time.

Senator D'AMATO. Will you make that available to this committee?

Secretary KEMP. Absolutely.

[The information follows:]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

24 CFR Parts 882 and 887

[Docket No. R-89-1452; FR-2662]
RIN 2502-AE70

Section 8 Certificate Program, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing - Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Certificate Program, Moderate Rehabilitation Program, and Housing Voucher Program regulations to permit a Public Housing Agency (PHA) (including an Indian Housing Authority) to deny or terminate assistance to applicants and participants in these programs if family members are engaging in drug-related criminal activities or in violent criminal activities. Current regulations provide limited authority for a PHA to act effectively when it has reason to believe that a program applicant or participant is engaging in such activities. A family to whom a PHA proposes to deny or terminate assistance would be entitled to the same procedural protections that are currently applicable to proposed denials or terminations of assistance on other grounds. In deciding whether to deny or terminate assistance, a PHA would have discretion to consider all of the circumstances in each case.

The purpose of this rule is to further the government's war against drugs and violent crime, and to ensure the provision of decent and safe housing for eligible families and for individuals residing near assisted families.

DATE: Comment due date:

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, D.C. 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and

copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

This rule proposes revisions to the Certificate, Moderate Rehabilitation, and Housing Voucher Program regulations to provide PHAs with more comprehensive authority to deny assistance or terminate assistance if family members are engaging in drug-related criminal activities or in violent criminal activities. The purpose of the proposed revisions is to further the government's war against drugs and violent crime, and to ensure the provision of decent and safe housing for eligible families and for families and individuals residing near assisted families. The Department emphasizes that the purpose of this rule is not to make adjudications that a family member is a criminal. Rather, the purpose is to identify behavior which is so detrimental to society as a whole (and more specifically to adjacent families and individuals and to other members of the assisted family) that it should not and cannot be tolerated. The Department believes that such conduct should be a basis for refusing to assist families that have members engaged in these activities. Providing PHAs with this additional authority should create incentives for family members to deter any other family member who may be

engaging in these activities. The revisions would also avoid a circumstance in which a PHA might otherwise be required to issue a certificate or housing voucher to a family that had been evicted by an owner from assisted housing for engaging in drug-related or violent criminal activities.

Under current Certificate and Housing Voucher Program regulations, a PHA may terminate assistance to a family (including refusing to issue a family a new certificate or housing voucher when the family wants to move) if the family uses its assisted unit for drug trafficking or permits its assisted unit to be used for that purpose. The PHA may terminate assistance under these circumstances because a family's use of its unit for drug trafficking would constitute a violation of the family's obligation to use its unit "solely for residence by the family" (see §§882.118(a)(5) and 887.401(a)(4)). Current Certificate and Housing Voucher Program regulations, however, do not provide authority for a PHA to deny or terminate assistance if a member of an assisted family is engaging in drug-related criminal activities, but is not using the unit for these activities, even if these activities would constitute a lease violation.

The Moderate Rehabilitation Program regulations do not contain a comparable, explicit limitation on the use of the unit solely for residence by the family. Section 882.413 of the Moderate Rehabilitation regulations, however, authorizes a PHA to terminate assistance if a family fails to meet its responsibilities under the lease or the Statement of Family Responsibility. (The current Statement of Family Responsibility for the Moderate Rehabilitation Program, Form HUD-52578A, does not contain any provision that could be a basis for terminating assistance because of drug-related criminal activities.) If the drug-related criminal activity or other criminal activity constituted a lease violation, a PHA could terminate assistance under 24 CFR 882.413.

This proposed rule would provide a more uniform and effective approach to dealing with the problem of drug-related criminal activities in the PHA-administered Section 8 programs where the program participants are selected by the PHA. It would also give PHAs the authority to deny or terminate assistance to families where a family member engages in violent criminal activity.

This proposed rule would make the necessary revisions within the current regulatory framework for each program without attempting to make any major structural change to the respective program regulations. In the Certificate Program, §882.118, Family obligations, and in the Housing Voucher Program, §887.401, Family responsibilities, existing regulations define the obligations of a program participant. These provisions would be revised to provide that family members shall not engage in drug-related criminal activity or violent criminal activity. "Drug-related criminal activity" would be defined to include the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity would be defined additionally to include the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance. However, in the case of activity involving such use or possession, the rule proposes that the activity must have occurred within one year of the time that the PHA provides notice to the applicant or participant of its determination to deny admission or terminate assistance.

The rule makes this temporal distinction for criminal activity related to use of drugs in order to provide an outer limit on the amount of time that use-related activities may serve as the basis for adverse action against an applicant or participant. Just as the rule is intended to create a disincentive to drug use by applicant or tenant families by providing for denial or termination of their assistance, this limitation on the definition should serve as an incentive to former drug users who have stopped taking drugs and who are "clean" or are controlling their addiction.

"Violent criminal activity" would be defined to include any felonious criminal activity that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

By adding this proscription of criminal activity to §§882.118(b)(4) and 887.401(b)(5), a PHA, under existing §§882.210(b) and 887.403(b), could: deny an applicant admission to participate in the Certificate or Housing Voucher Program; deny issuance of another Certificate or Housing Voucher to a

participant who wants to move from another unit; or decline to enter into a housing assistance contract or to approve a lease, when requested by a participant, based on a violation of a family obligation. A PHA, under §§882.210(d) and 887.403(c), could also terminate housing assistance payments that are being made on behalf of a participant under a current housing assistance contract.

If a PHA proposed to terminate assistance to a participant family, based on alleged drug-related or violent criminal activities of one or more family members, the family would be entitled to due process protections as set forth in current §882.216(b) or §887.405(b). Under these sections a PHA must adopt written procedures for conducting a hearing for participants that include: providing the participant written notice of the decision and of the opportunity to request a hearing before a person or persons designated by the PHA, other than a person who made or approved the decision or a subordinate of such person; the right to be represented by a lawyer; opportunity for the participant to present evidence and question any witness; and issuance of a written decision, stating briefly the reasons for the decision.

Under the proposed revisions, a PHA, after meeting appropriate due process standards, could deny or terminate assistance whenever the criminal activities were engaged in while the family was a participant in either the Certificate or the Housing Voucher Program. The above-described revisions would not, however, provide authority to deny assistance to an applicant family that is engaging in the proscribed criminal activities but is not a participant in either the Certificate or Housing Voucher Program, because the family would not be subject to the family obligation requirements of §882.118 or §887.401. To cover this situation, this rule also would revise §882.210, Grounds for denial or termination of assistance, to add a new paragraph (b)(4), and §887.403, Grounds for PHA denial or termination of assistance, to add a new paragraph (b)(2). These new paragraphs would authorize a PHA to deny an applicant admission to the Certificate or Housing Voucher Program if a member of the applicant's family has engaged in drug-related criminal activity or violent criminal activity.

An applicant family that was being denied admission to participate in the programs because of alleged drug-related or violent criminal activities of

a family member would be entitled to informal review of the decision under §882.216(a) or §887.405(a). The PHA's informal review procedures must include: notice to the applicant containing a brief statement of the reasons for the decision; the opportunity to request a review of the decision by a person or persons designated by the PHA, other than a person who made or approved the decision or a subordinate of such person; the opportunity to present written or oral objections to the decision; and a written final decision, including a brief statement of the reasons for the final decision.

This proposed revision would constitute a fundamental change in HUD policy concerning a PHA's authority to screen applicants for admission to these programs and to the Moderate Rehabilitation Program, discussed below. Under these programs, the PHA is responsible for determining who may receive assistance, and the owner of the unit is responsible for choosing a tenant, including whether or not to rent to a certificate or housing voucher holder. HUD regulations have not authorized a PHA to consider expected behavior or suitability as a tenant in deciding whether to place a family on a waiting list or to issue a family a certificate or housing voucher. Existing grounds for denial of admission to participate in these programs that are based on past conduct have all concerned actions by an applicant related to past participation in a federal housing assistance program. Decisions concerning a family's expected behavior and suitability as a tenant have been left to the owner to make in deciding whether to lease a unit to the family.

The Department believes that it is appropriate to provide this limited authority to PHAs to consider the behavior of applicants. Clearly, the PHA should be able to deny assistance in the first instance on the same ground that it can terminate the assistance after it is being provided.

With respect to the Moderate Rehabilitation Program, §882.413, Responsibility of the Family, would be revised to prohibit a family from engaging in drug-related criminal activities or violent criminal activities. Section 882.514, Family participation, would also be revised to authorize a PHA to deny eligibility to participate in the Moderate Rehabilitation Program if a member of the applicant's family engages in drug-related criminal activity or violent criminal activity.

The addition of these provisions would enable a PHA to use the current procedures in §882.514(f) to deny assistance to an applicant family or to deny or terminate assistance to a participant family, if a family member fails to comply with this new requirement. Section 882.514(f) provides for written notice and an opportunity for an informal hearing before a PHA may deny or terminate assistance to a family.

These procedures would give PHA's broad discretion to consider all of the circumstances in each case, including the seriousness of the offense, the extent of participation by family members, and the effects that denial or termination would have on family members not involved in the proscribed activity. PHAs could, in appropriate cases, permit family members not involved in the proscribed activities to continue receiving assistance on the condition that family members determined to have engaged in the proscribed activities will not reside in the unit.

E. Other Information

A Finding of No Significant Impact with respect to the environmen. has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual indust[illegible] Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a

substantial number of small entities, because this rule's primary effect is to permit PHAs to terminate or deny assistance to families when a member or members of the family have participated in drug-related activities or in serious criminal activities.

HUD has determined, in accordance with E.O. 12612, Federalism, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule would not substantially alter the established roles of HUD the States and local governments, including PHAs. The rule would provide PHA's with an additional ground for denying or terminating assistance, but the role of the PHA in these programs would remain unaltered.

HUD has determined that this rule is likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, The Family, because the rule should improve the environment in which assisted families reside by enabling PHAs to terminate assistance to families engaging in criminal activities. It should also provide an incentive to families to discourage family members from engaging in these activities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989, (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 882

Grant programs--Housing and community development; Housing; Low and moderate income housing; Mobile homes; Rent subsidies.

24 CFR Part 887

Grant programs--Housing and community development; Housing; Low and moderate income housing; Rent subsidies.

Accordingly, the Department proposes to amend 24 CFR Parts 882 and 887 as follows:

PART 882 - SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM - EXISTING HOUSING PROGRAM

1. The authority citation for Part 882 would be revised to read as follows:

AUTHORITY: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In §882.118, a new paragraph (b)(4) would be added to read as follows:

§882.118 Obligations of the Family.

* * * * *

(b) * * *

(4) Engage in drug-related criminal activity or violent criminal activity. This proscription applies to each Family member. For the purposes of this section --

(i) "Drug-related criminal activity" includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant under §882.216(a), or to a participant under §882.216(b)(3)(i), of the PHA's determination to deny admission or terminate assistance.

(ii) "Violent criminal activity" includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

3. In §882.210, paragraph (b) would be revised to read as follows:

§882.210 Grounds for denial or termination of assistance.

* * * * *

(b) The PHA may deny an applicant admission to participate in the Certificate Program or, with respect to a current participant, may refuse to issue another Certificate for a move to another unit, approve a new lease, or execute a new Contract, if the applicant or participant:

(1) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(2) As a previous participant in the Section 8 program or as a participant in the Certificate Program, has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance contract for rent or other amounts owed by the Family under its lease (see §882.112(d) and §887.209 of this chapter), or for a vacated unit (see §882.105(b)).

(3) Has violated any Family obligation under §882.118 or under §887.401 of this chapter.

(4) Has engaged in drug-related criminal activity or violent criminal activity, as defined in §882.118(b)(4).

(5) Breaches an agreement provided for in paragraph (c) of this section.

(6) Has committed any fraud in connection with any Federal housing program.

* * * * *

4. Section 882.413 would be revised to read as follows:

§882.413 Responsibility of the Family.

(a) A Family receiving housing assistance under this Program must fulfill all of its obligations under the Lease and Statement of Family Responsibility. No Family member may engage in drug-related criminal activity or violent criminal activity. Failure of the Family to meet its responsibilities under the Lease, the Statement of Family Responsibility, or this section shall constitute grounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, the provisions of §882.514(f) must be followed.

(b) For the purposes of this section --

(1) "Drug-related criminal activity" includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant or participant family of the PHA's determination to deny admission or terminate assistance.

(2) "Violent criminal activity" includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

5. In §882.514, paragraph (a)(2) would be redesignated as paragraph (a)(3) and a new paragraph (a)(2) would be added, to read as follows:

§882.514 Family participation.

(a) * * *

(2) A PHA may determine that an applicant Family is ineligible for participation because one or more Family members have engaged in drug-related criminal activity or violent criminal activity, as defined in §882.413(b).

* * * * *

PART 887 - HOUSING VOUCHERS

4. The authority citation for Part 887 would be revised to read as follows:

AUTHORITY: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In §887.401, a new paragraph (b)(5) would be added, to read as follows:

§887.401 Family responsibilities.

* * * * *

(b) * * *

(5) Engage in drug-related criminal activity or violent criminal activity. This proscription applies to each family member. For the purposes of this section --

(i) "Drug-related criminal activity" includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant or participant, under §887.405, of the PHA's determination to deny admission or terminate assistance.

(ii) "Violent criminal activity" includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

6. In §887.403, paragraph (b) would be revised to read as follows:

§887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(b) Denial of assistance. The PHA may deny an applicant admission to participate in the Housing Voucher Program or, with respect to a current participant, may refuse to issue another housing voucher for a move to another unit, approve a new lease, or execute a new housing voucher contract, if the applicant or participant:

(1) Has violated any family obligation under the Housing Voucher Program or the Certificate Program.

(2) Has engaged in drug-related criminal activity or violent criminal activity, as defined in §887.401(b)(5).

(3) Has committed any fraud in connection with any federal housing program.

(4) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(5) Has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance contract for rent or other amounts owed by the family under its lease (see §887.215 and §882.112(d) of this chapter), or for a vacated unit (see §882.105(b)).

(6) Breaches an agreement to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. The PHA, at its discretion, may offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.

* * * * *

DATE: 9/7/89

C. Austin Fitts, Assistant Secretary for Housing -- Federal Housing Commissioner

Senator D'AMATO. Madam Chair, I have a number of questions which I'm going to ask be submitted for the record. They're rather technical in nature and I ask that they be responded to in writing at a later time.

Senator MIKULSKI. Without objection, so ordered.

Senator D'AMATO. I have no further questions.

Senator MIKULSKI. Senator Gramm.

Senator GRAMM. Thank you, Madam Chair.

ANTIDRUG EFFORT IN PUBLIC HOUSING

I think it's very important that we act and give you the authority that is necessary to evict from public housing people who are selling or using illegal drugs. And I want to commit to you, Mr. Secretary, that we will take your proposal and anything else that you generate between now and the time we do our markup, which is, I understand, later this week or next week.

I can assure you that I will see that the committee votes on your proposal.

We provide public housing not as a permanent residence but as a stepping stone for people to have an opportunity to share in the American dream.

We can't do that if their children are being plagued with drug abuse. So I have no sympathy whatsoever for people who either sell or use drugs in public housing.

In my State, we have a lot of people who are waiting in line to get into public housing, and I think it's very important that those

that are abusing public housing by using or selling drugs be thrown out in the street.

And so, if you will give me any proposal you have, I can assure you that we will vote on those proposals and I think they ought to be part of this appropriation bill.

SECTION 8 CONTRACT RENEWALS PROBLEM

Let me also say that I don't see anything wrong with having decisions driven by the budget. In fact, we're talking about the only decisionmaker in American society that does not make decisions driven by the budget. Every household and every business in America has to make decisions based on budget.

I could easily outspend my budget. My children could do it; it's child's play. Yet, we don't get that opportunity. And I think the plain reality is there are a lot of things going on in America where the Government has a legitimate role and where we have to set priorities.

And I think anybody can solve the problem at least superficially, given enough money. Our job, your job, is dealing with the problem given the resources we have. And I think the problem is especially difficult on this committee because we have a lot of national priorities that are competing against each other and we have a lot of things that are coming to a head, whether you're talking about the VA or renewing certificates for HUD or the space station.

But I don't have any objection to saying governments are budget driven. In fact, we've been waiting for 40 years for government to awaken to the same budget realities that everybody else has.

Finally, let me say that I think it is frustrating trying to get good data. I empathize with our chairman having to write a budget without the proper innformation. But I would applaud the efforts you are making to try to get it straight. I think we have not had good data because we have not been budget driven.

I think this problem has been going on for a long time because nobody had a bottom line. I think the fact that we are now looking at a bottom line forces us to try to get the facts.

And I think it's important for the taxpayer to know what kind of commitments we have out there on public housing.

Now, big BA figures, budget authority figures, don't affect outlays this year. But they do represent a commitment that we're going to spend that money over an extended period of time and I think, if we look at other options, I support your effort to try to see more people have an opportunity to own their own homes. Nothing would make me happier than to see us move to begin to sell off public housing and have private ownership.

But, as we move toward those things, we've got to know what our commitments are in terms of the resources that are available.

So I commend you for your work in that area and, again, I just simply want to try to help you do what you're doing. Any change in law that you need, any support you need in going back and correcting something where a problem has arisen in implementating regulations or from a court decision, if you will give us the request, I will work to see that you get the tools.

Other than that oration, Madam Chairman, unless the Secretary would like to respond, I'm finished.

### NEED TO WAIVE LEASE AND GRIEVANCE PROCEDURE IN PUBLIC HOUSING

Secretary KEMP. No; I totally agree with what you say, Senator Gramm. There's no one in this country that wants more than the Bush administration that HUD be strong on cleaning up public housing. The President himself has talked to me about this and has also suggested, as I have told this committee, that we want to be very strong in protecting due process.

But, one thing this committee or you can do or Senator Mikulski can do and others is to help us repeal that provision in the supplemental that prevents us from waiving our lease and grievance procedure. When there is due process on the State level, these procedures are an impediment to getting these people out of public housing.

And I want you to know that we're going to be not only tough on drugs but tough on due process. But, where the States have that due process, I think we should be allowed the flexibility to waive that cumbersome lease and grievance procedure.

You have my commitment, as I told Senator Mikulski, to do everything we can to give these folks in public housing, the majority of whom are not doing or dealing drugs, a safe living environment. These are decent and honorable people who need us to move on their behalf.

I am convinced that, if we can give them some help from Liberty Square in Miami to Bromley Heath in Boston and across this country from Texas to California, I'm convinced we can make an improvement in public housing in America.

Senator GRAMM. Many public housing tenants would hang the drug dealers. All we're talking about doing is putting them out in the street. So we're way behind the people who live in public housing. They hate those people.

Secretary KEMP. I can think of a house where I would put them.

Senator MIKULSKI. Senator Nickles, do you have any questions?

Senator NICKLES. Madam Chairman, thank you very much.

It's good to see the Secretary here. I appreciate your comments. I also appreciate the efforts made to reach an understanding on some of the past mistakes on the number of certificates to be expiring and the cost of the exposure.

### BUDGET IMPACT OF RAINIER COURT DECISION

I might ask you, Mr. Secretary, I notice in your comments and also the comments by the chairman of the committee who dealt with this court case and the exposure in the Ninth Circuit Court of Appeals, the *Rainier* case, deals with what may be windfall section 8 payments you mentioned to the tune of $150 million. It could be up to $500 million.

Secretary KEMP. That's the estimate.

Senator NICKLES. When you say "windfall section 8 payments"——

Secretary KEMP. It's about $150 million in just that district. It would be half a billion if applicable nationwide.

Senator NICKLES. When you say "windfall section 8 payments," those would be made to the project owners?

Secretary KEMP. Yes.

Senator NICKLES. Not to get into a lengthy legal description, but how come?

Secretary KEMP. That was the *Rainier* case court decision.

Senator NICKLES. Were the owners saying that they were being underpaid by HUD?

Secretary KEMP. There was a dispute over how the formula was set and that decision, if applied nationwide, would lead to these owners again as an estimate costing us about $500 million. And it would not allow us, Senator Nickles, to take into consideration market conditions in, say, Oklahoma or in Denver or in other markets that might be different than, say, Boston or southern California. It was just a generic decision. That decision applied generically, within our view, in our estimate, would be close to half a billion dollars.

Senator NICKLES. Is it presently your intention to appeal that decision?

Secretary KEMP. Yes.

SECTION 8 PAYMENTS IN EXCESS OF MARKET RENTS

Senator NICKLES. I would encourage you to do it. I might reiterate something I mentioned to you either during your confirmation or in subsequent hearings. I've been bothered by the fact that I've seen section 8 payments made that are well in excess of what the market would dictate.

I've mentioned before I'm really troubled by the fact that I see the Federal Government paying $400 or $472 a month for a dilapidated, drug-infested apartment. It's happened time and time again, and I'm sure it hasn't happened just in my State. I'm sure it's happened in many States where we have section 8 contracts or certificates or arrangements made, where we've had federally insured housing.

And maybe it's put Section 8 on top of it to guarantee income for these absentee landlords, most of whom have done it with limited partnerships and have been raping the system blind.

I'm really concerned about it.

Secretary KEMP. I appreciate your concern.

Senator NICKLES. And I see this court case and I wonder if it's going to be expanding the problem instead of moving towards solving it.

Secretary KEMP. The concern that you have expressed, Senator Nickles, with some of the problems in your home State of Oklahoma I have seen on the spot in other parts of the country. Rape is a pejorative that is perhaps not strong enough. It is disgraceful what has happened and you can be assured that we want to do everything that we possibly can to bring accountability to that aspect of this environment that has caused the problem to exist for far too long.

And I have seen it not only in your home State but in other parts of the country as well. We really need to rethink this process and make sure that those who have taken advantage of the law and the people in this situation will no longer exist.

I'll pledge to you that we're going to do everything we can to bring about a reform of that.

HUD TAKEOVER OF INSURED PROJECTS

Senator NICKLES. Well, I've asked your office and I understand you've been getting some cooperation, I've asked for an investigation on a couple of these organizations. And I would like to follow up on that.

I might also tell you, in case you're not up to date, in Oklahoma in a couple of these units HUD has taken over management of them. That's not necessarily the best alternative, but it's certainly better than continuing to spend hundreds of thousands of dollars, actually monthly, on dilapidated, drug-infested apartments. That's not a good environment for the tenants and certainly not a good deal for the taxpayers. It is a lose/lose situation.

And we need to turn it around. You're working with us to do that, and I appreciate that very much.

Secretary KEMP. We had another one in Washington, DC, called Tyler House. I was out there myself and the fact that we had to take it over pained me, but we had to do it in the interests of the tenants.

I made a statement that I wanted to get the owners to be accountable for the abominable environment in which people and children were being forced to live. I was there myself. The only thing left, unfortunately, for me to do at that time was to have HUD take it over.

But we are going to move and I've made that pledge and it is not an empty threat. We're going to spend not only a lot of time investigating these conditions in other parts of the country, but we're going to make proposals for a total overhaul of this condition, this program.

Senator NICKLES. I really look forward to your leadership in that. Incidentally, that one unit you mentioned I think has common ownership with the ones that I mentioned in Oklahoma.

Secretary KEMP. It is.

Senator NICKLES. On the same line, they came back, the owners did, and said, "Well, the solution would be to increase the rates," which were already double what the market would dictate. And nobody in their right mind would pay that kind of money for those dilapidated apartments.

Secretary KEMP. That group of people, the management ownership organization, were getting something like $28,000 a month for security and there was absolutely no security at Tyler House for the families, for the children.

Drug dealers and users were coming down into the basement and using the basement for doing drugs and dealing drugs. It was disgraceful.

I just want to assure you that we are moving and will move as rapidly as possible to make a dramatic change in the program as well as in the law that would allow that to happen.

I appreciate working with you on this.

Senator NICKLES. Thank you.

Thank you, Madam Chair.

Senator MIKULSKI. Thank you, Senator.

Do you have any other questions for the record?

Senator NICKLES. No.

### SUFFICIENCY OF REVISED ESTIMATE FOR SECTION 8 CONTRACTS RENEWALS

Senator MIKULSKI. Secretary Kemp, I just have one other set of questions related to the section 8 issue that I'll regale you with, and then I'll use my time to talk to you a little bit about the anti-drug efforts in public housing.

Just to be sure we are again clear on our estimates, I have a few concerns. One is how we're counting. And then the other is related to a program.

Let me go to how we're accounting. I understand from the information submitted to the committee that your revised plan excludes all certificates that expired in the last 2 weeks of November 1990. That's a 2-month——

Secretary KEMP. That is correct.

Senator MIKULSKI. There are those who said to us that if we go all the way until December 1, we could add another 4,000 certificates and a $100 million in budget authority.

Where does that leave us? Are we just kind of squeezing out 4,000? Or will it come due and will we start?

Secretary KEMP. My understanding, Madam Chair, is that is correct.

Al, do you have something that would further clarify the point?

Mr. KLIMAN. Yes, Madam Chair, the figures you recited are correct. What happened is that when we calculated the numbers under the new system to see what they would come out to, it came out to less than the $1.1 billion.

That was based upon going 1 month. Believing that the certificates were somewhat more complicated to renew than the others, we determined that we would go as far into November as we possibly could to use up the full $1.1 billion.

So our original estimates which were 1 month, just for October, were about $129 million lower than the $1.1 billion.

So we decided that we would propose to the OMB—and they finally agreed that because the certificates, we believe, are somewhat more complex than the others—that we would put it in. If there were more money to go to December, we would do that too.

Secretary KEMP. It will go through November though.

Mr. KLIMAN. Our proposal as it stands right now will go through October for the vouchers and loan management units and go through about half of November for the certificates.

Senator MIKULSKI. Just tell me once again, for those 4,000 certificates that go through until December 1, will we end up with an unfunded situation to the tune of $100 million?

Secretary KEMP. No; we think the $1.1 billion will cover all the renewals needed in fiscal year 1990. That will take us into 1991, as Mr. Kliman mentioned, for October and part of November. And it isn't necessary to go beyond that, the $1.1 billion is enough.

Senator MIKULSKI. I thought your own principles said that there had to be a 2-month renewal for all of October and all of November. That's where my own estimate came from.

Mr. KLIMAN. Madam Chair, there may be some confusion there. We have said that we wanted to get into the second month. It is not 100 percent essential to have 2 months. In fact, all of the technical people say that what we desperately needed was 1 month.

When we saw that we could have a little extra room there, we took it.

Senator MIKULSKI. I got it. I see this as part of a situation that's unfolding. What I'm grateful for, quite frankly, is that it's happened now with about 40,000 units instead of 400,000 units.

So, if our estimates are wrong, we can still come in and be able to deal with it. And it might be a $100 million error, but it's not a billion dollar error.

So I see this really as a case study. Really, we're looking at one situation so that then when we go look at the bottom line, these renewals will survive. That's why I'm asking these kind of questions.

Secretary KEMP. Madam Chair, thank you for that comment. It does alert us and send up a red flag. I think it is fortunate that we have discovered this test case as early as you and your staff have done.

### VIOLATIONS OF REPROGRAMMING RULES

Senator MIKULSKI. Now, my last question is the reprogramming. As I understand it, it's one of the ways that we dealt with the situation. Contracts on 13,000 certificates were extended for 2 years with fiscal year 1989 amendment money. That really wasn't agreed to.

And we've talked about that. And then you went back and found that someone had acted and found that you had not ordered that. So we understand that.

Then what we now find is that there's use of $20 million in 1989 certificate money for Operation Bootstrap that did not have reprogramming agreements.

Could you comment on that? This is pretty serious.

Secretary KEMP. When I found out that it was a reprogramming issue, Madam Chair, we did send a letter to this committee as quickly as we came upon the information. And I know that you can appreciate the fact that there was no intent on our part to short-circuit the process.

Senator MIKULSKI. I know right now it's going the way we wanted it to.

And, Mr. Secretary, I know again that you're improving not only your technology but your staff and communications. And I'm going to ask you this. I know you've given it to me in my office, but let me ask you publicly.

Mr. Secretary, this committee believes very strongly in these guidelines for reprogramming.

Do I have your assurance that you will, in the future, abide by those guidelines, so that we do not have to get into nitpicking statutory restrictions?

Secretary KEMP. Madam Chair, you have that. Read my lips: You have my assurance that you will get that guarantee.

Senator MIKULSKI. Thank you.

Now we've gone through a very rigorous analysis of this situation and I think it's lasted at least 90 days. And it's been hard. It's been tough. I've certainly learned a lot about the section 8 program. More than I ever thought.

But I think it shows us the legislation which was passed 15 years ago has not been watched in the same kind of management way.

### REVISED ANTIDRUG REQUEST

Now let's get to the crisis, which is fighting drugs. And as I said, when it comes to this issue, this Senator—and I know I speak for the subcommittee—doesn't want to play price-tag politics.

Could you share with the committee? You talked about $50 million. We originally were going to place $25 million in the fiscal year 1990 appropriation. It means we're going to have to come up with another $25 million.

Would you share with us where you think that money will come from? And also other initiatives you would like HUD to propose in the area of public housing?

Secretary KEMP. Well, the $50 million, as I understand it, was proposed to come from public housing subsidy money and be targeted for the operating subsidy money, directly targeted to the antidrug effort.

We think and believe very strongly, Madam Chair, that improvement of public housing will also have a positive impact, that the $50 million targeted is very much needed for the types of things that have been done in Chicago, Baltimore, here in DC, and throughout the country.

Senator MIKULSKI. So you want to recycle the money out of current operating expenses and target it to antidrug efforts; is that correct?

Secretary KEMP. The $75 million that was given to operating subsidies for public housing by the House was over and above the President's budget. What they are proposing is that they take $50 million of those $75 million and devote them specifically to the antidrug effort in public housing.

Senator MIKULSKI. That's the assistance that would go to improve security mechanisms, and so forth.

Mr. Kemp, I know you've traveled around this country. You and I have a strong belief in the tenants doing self-help, though they can't take on the king pins by themselves.

### EFFORTS TO FIGHT DRUGS

Here's what the people are telling me. We need to know the kinds of concrete, specific, immediate, realizable steps we can take

to improve the situation. County commissioners tell that to me, public housing administrators tell me that.

Are you going to have a clearing house, a training academy, essentially a clearing house where public housing authorities, public housing tenants associations can find out what is working so that we don't spend the money reinventing the wheel and doing all kinds of things?

Second, will there be some regional training academies so that we can implement this in a way that really moves it with a quick step?

Secretary KEMP. Well, Madam Chair, let me say to you as well as for the record that I have appointed Frank Keating to be my General Counsel, to be, quote/unquote, a drug czar, to use the common parlance.

Mr. Keating, as you know, has put into operation an immediate clearing house for those public housing authorities around the country, 3,300 of them, to get the type of information that they need, information that can be called together and disseminated so that people can see what's being done in Chicago.

There's a very outstanding PHA chair, Bob Armstrong in Omaha, that I've mentioned several times.

What's been done here in DC and what hasn't been done.

So that's one thing.

No. 2, we definitely believe that there are things that can be immediately done—Operation Clean Sweep that started in Chicago has been used by Arthur Clapper in public housing here in DC—is applicable in other public housing communities.

As you've pointed out many times, we have to involve the tenants themselves.

But I have been pleased to spend a lot of time in public housing communities around the country.

Just a couple of weeks ago, I was in Miami at Liberty Square. In fact, not to digress, but we drove down 71st Street in Miami. You come to a place called the 71st and 15th. I was absolutely—I thought I'd seen everything in the world—in every block, there are two and three teenage boys, and younger in some cases, who are the dealers and the runners and part of the infrastructure of the cocaine/crack trade in Miami.

We went to the hospital where the babies were being born with crack in their bloodstream. So I consider this, as do you, Madam Chair, and as the President said last night, as absolutely a call to arms.

We think there's a lot of things that can be done. We need to employ security personnel. Every inner-city public housing resident to whom I have talked has begged me and begged us to put more assistance in bringing some authority, either a PHA or police or both, into the community where there's a presence of drug dealing.

I have thought that perhaps we should give free public housing to retired police or fire officials who could live in public housing to give some sense of stability to the community.

We think physical improvements could be made through the rehab moneys. We could help improve those units that are being used for crack dealing and smoking, that they can be reclaimed for those who need them and have to stand in line for public housing.

Of course, as I mentioned many times, we need to involve the tenants in patrols as I saw at LeClerc Court in Chicago and Rockwell Gardens. They've been swept. All eight highrise units, highrise communities have been swept by the Chicago Housing Authority. And I'm told by both our regional administrator as well as Mr. Lane, the CHA Administrator, that they are clean today and there is a sense of security.

So I am trying to send the word I think these $50 million are going to go a long way.

Is it enough?

I think it would be enough in fiscal year 1990 if we combined our CIAP money, our housing subsidy money—not only for the efforts to improve the living conditions, but also to give these people a sense of security about raising their children in a drug-free public housing environment.

Senator MIKULSKI. Mr. Secretary, we're on the same wave-length. It's not only going to need help in terms of more security guards and better blocks, all those things that we need in any public housing, but to mobilize the will of the residents and give them the technical assistance backup to do the job.

We were also hoping though that as we worked that we would really think of targeting public housing for special education programs, for drying up demand. Drying up demand because it's going to be impossible to build a wall around every public housing project.

Secretary KEMP. I agree.

Senator MIKULSKI. You mentioned training and we'll close on this note. Mother Cabrini was the first American Catholic saint, Mr. Secretary, as you know. She devoted her life to fighting cancer. And now we have to fight a new cancer called cocaine and we're going to need the saints and everybody helping this Appropriations Committee, helping to do it.

## SUBMITTED QUESTIONS

Thank you very much. I have questions for the record as well as questions submitted by various Senators.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

# QUESTIONS SUBMITTED BY SENATOR MIKULSKI

## ACCURACY OF HUD DATA

SENATOR MIKULSKI: The biggest question I have about your revisions, Mr. Secretary is whether or not they are based on accurate and fairly precise data. You - HUD are the only source we have. If the data you use is bad - then the whole process becomes nothing more than a bad guessing game. When did the Department first sense that the information on which the 1990 budget was based was significantly off the mark?

ANSWER: Early in calendar year 1989, staff became aware of the potential for a timing problem involving the renewal of expiring contracts. We were aware of potential data problems in the Housing MIS data used for budget projections and were making efforts to correct the problems by shifting reliance to accounting data.

SENATOR MIKULSKI: When was this problem first brought to your attention or that of senior staff? What steps did you take when you found out?

ANSWER: Top management initially became aware of a problem with the timing of expiring contracts at approximately the time a reprogramming letter was transmitted to Congress to correct the problem on early fiscal year 1990 expiring loan management and voucher contracts. The problem with expiring certificates initially surfaced in early June and staff began efforts to develop options for dealing with the problem.

SENATOR MIKULSKI: The Director of Assisted Housing sent a memo to HUD field offices on May 4, 1989, asking them to cross-check the data used to prepare the 1990 budget. That timing seems a little like closing the barn door after the horses have already left - because it was four months after the budget was sent to Congress and over two months after President Bush sent us his revisions to HUD's budget. Can I have your assurance that such a review of the '91 budget data will be done thoroughly before it is submitted to Congress?

ANSWER: The Department is currently in the process of developing a new system for monitoring and controlling the Section 8 payment process. The first stage of this effort will involve a reconciliation of the data contained in each of the more than 20,000 Section 8 contracts and 50,000 funding increments with current data in the accounting systems. As these data are reconciled, it will be loaded into new control files which will give us an accurate, up-to-date, automated database for future use. We hope to complete the reconciliation and loading of the control files during fiscal year 1990 and are scheduled to begin the process in three pilot offices in about a month. However, this reconciliation will involve checks of numerous data fields on almost 3 million records and will be extremely staff intensive for the Field. We currently estimate the project will require 250 staff-years in fiscal year 1990.

SENATOR MIKULSKI: Will you make available to the Committee the results of that review at the time you give us the '91 Budget?

ANSWER: Yes.

SENATOR MIKULSKI: From the time this May 4th review started until you sent us your official revisions on August 2nd is three months. Given the urgency of having the right numbers on this issue before the appropriations process starts, why did this review process take three months from start to finish - insufficient staff, bad data systems, or something else?

ANSWER: A combination of the factors you have mentioned, complicated by problems associated with the transition to a new management and policy team at HUD and lack of senior officials in place due to delays in confirm tions of Presidential appointees caused the 3-month delay.

SENATOR MIKULSKI: Let's turn to HUD's data systems used to prepare these estimates. One of the documents your staff has used with us says that until just the past few months, it has been, and I quote "virtually impossible" to get adequate financial information on individual Section 8 contracts for preparing budget estimates. Why has the Department waited until now, when "renewals" are upon us--to put these systems in place?

ANSWER: HUD did not wait until now to put the systems into place. Work has been underway on the systems for a number of years. However, given scarce staff and ADP resources the development of Section 8 systems was not given a high priority.

SENATOR MIKULSKI: Were there ever any plans in prior years to put such systems in place--if so, why were those plans not implemented?

ANSWER: We found the data problems because systems <u>are</u> being put in place. The major accounting systems for Section 8--AHAS and SEAS--have been developed over the last several years. The SEAS system, which provides contract balance and disbursement data on all Section 8 contracts was completed in March 1988. Unfortunately, the system does not provide managers with easy access to contract data and it has taken us longer than it should have to correct this deficiency.

SENATOR MIKULSKI: If HUD cannot accurately account for the number of annual contribution contracts it signs with PHA's each year, nor the number of units funded each year, can you accurately account for the amount of housing subsidies needed each year and the level of amendment money required for individual contracts and units? In other words, don't the inaccuracies in your renewal estimates undermine confidence in any of the estimates you provide us in assisting housing?

ANSWER: Obviously, improved data and information on contracts should result in an improvement in future funding estimates. There is no question that our data systems have been inaccurate and still need improvement. We have been improving them and we intend to continue these efforts. However, even with improved data systems, projecting future funding needs will, as in all estimating, be subject to error. The key is to make certain that funds are sufficient to cover all immediate amendment needs and we believe our systems are sufficient for this purpose.

SENATOR MIKULSKI: What is your plan of action to develop better data systems?

ANSWER: 1. The Department, as a part of Secretary Kemp's cash management initiative, is developing plans to automate and improve the payment processing and verification process used for Section 8. As part of this effort, we intend to begin a major reconciliation of all Section 8 contract data beginning in fiscal year 1990. We estimate that this reconciliation, and the loading of all reconciled files, will use approximately 250 staff-years in fiscal year 1990. An action plan on this effort is due to the Under Secretary by November 1, 1989.

2. To improve the estimates for amendments under the Certificate and Moderate Rehabilitation program, Housing has devised a new system called "Survey." The system is a menu driven PC program which takes detailed information from the annual budget submitted by each PHA and uses that information to project future cost and amendment requirements.

3. The Department is reviewing all financial management and accounting instructions used for the Section 8 Certificate program to make sure that they are clear and understandable and that all financial transactions are processed in a uniform manner.

SENATOR MIKULSKI: If the revised '90 numbers change again, or if future budget figures change once they are sent to Congress, can I have your firm assurances that the Department will submit a supplemental request rather than expecting it to be funded at the expense of other programs in our Appropriations Bill? Can I have that assurance from you so the Administration will be bound by that commitment?

ANSWER: To the extent that numbers and estimates change again in the future, I will consult with OMB and the Committees in order to review options for resolving the problem. As we did in this case, the Department will come forward with any new information and data as soon as that information is available.

SHAVING THE SIZE OF FY 90 PROBLEM

SENATOR MIKULSKI: Now I want to turn to how you arrived at the $1.1 billion solution in 1990. First, you extended the contracts on 13,000 certificates for two years with FY 89 amendment money, certificates that otherwise were to have been renewed in 1990. That's a de-facto 2-year renewal. Doesn't that action directly contradict your August 2nd letter which said that Bush Administration policy is to renew all expiring contracts for five years?

ANSWER: No, it does not contradict the policy of a commitment to a 5-year renewal of expiring contracts. The 2-year extension of contracts approved in fiscal year 1989 was an emergency measure which was taken to compensate for data systems shortcomings and a lack of clarity in our policy on how to process renewals. We provided these contracts with a 2-year extension in order to prevent any lapse in subsidy assistance under these contracts. The measure was taken to protect the PHAs and the tenants they serve and not to contradict our stated policy. As the 2-year extensions come due, the Department fully intends to replace the expiring increments with new 5-year contracts.

SENATOR MIKULSKI: How much extra would it cost to extend all 13,000 units for the full 5 years?

ANSWER: The 2-year extensions processed in fiscal year 1989 involved 37 contracts with a total of about 50,000 certificates--including approximately 13,000 which would reach the 15th year during fiscal year 1990. Assuming those 13,000 were backed out of the current contracts with 2 years worth of funding, we estimate that an additional $270 million would be needed to add 3 more years. However, such a transaction would serve no useful, practical purpose.

SENATOR MIKULSKI: How much amendment money was used for this 2-year renewal?

ANSWER: An estimated $90 million in amendment funding was used for this purpose.

SENATOR MIKULSKI: Who authorized the use of amendment money for this purpose? Was anyone on your personal staff aware of this action prior to when it actually took place?

ANSWER: James Schoenberger, General Deputy Assistant Secretary for Housing authorized the use based upon advice from John Ambrogne, Director of Housing's Office of Financial Management. Mr. Ambrogne checked with legal staff and determined that use of certificates amendment funding to amend and extend certificate contracts was a legal use of such funds.

Amendment funds are used routinely to extend contracts and the only difference in this case was the use of amendment funding for an increment which had reached the 15th year. Mr. Ambrogne, who has been with the Department for more than 16 years (including 14 years in Budget) did not believe the action constituted a reprogramming. As a consequence, Housing did not believe it was necessary to notify the Committees of the action. From Housing's perspective, the only important thing was to make sure funding continue to be available to support these contracts with no lapse in assistance.

SENATOR MIKULSKI: This use of amendment money was authorized by Mr. Schoenberger in a July 26th memo to all regional HUD offices, only a week before you sent your revised renewal plan to the Hill. This action is a very significant change in Administration policy, not to mention a violation of the Committee's reprogramming guidelines. Why did this action happen and why didn't anyone above the level of Deputy Assistant Secretary know about it?

ANSWER: As noted in the previous answer, Housing did not view the action as either a significant change in Administration policy nor did the Housing staff view the action as a violation of the Committee's reprogramming guidelines. From the Housing staff level perspective, the actions taken were a legitimate use of funds to protect and extend existing contracts. The staff truthfully did not believe that the extension of these contracts to prevent a disruption of services would be a controversial and highly criticized action. From the staff perspective, the important thing want to prevent any potential lapse of assistance. In order to prevent such disruption, the extension of those contracts was absolutely essential. Staff took no measures to hide this action and in fact discussed it freely with other HUD staff and staff from the Committees. No one above the Deputy Assistant Secretary was specifically notified because Mr. Ambrogne advised the Deputy Assistant Secretary that such action was not necessary. In retrospect, Mr. Ambrogne's advice to the Deputy Assistant Secretary was incorrect. Had confirmed policy officials been in place at the time, however, there would have been such consultation.

SENATOR MIKULSKI: The amendment money which was used was not appropriated for this purpose. So what specific amendment money needs, which were used as the basis for including these funds in last year's bill, are now to go unmet?

ANSWER: Amendment funds are used as part of the process in extending expiring contracts so it is not accurate to say that such funds are not appropriated for this purpose. In point of fact, amendment funding and renewal funding serve the same purpose--that is to ensure that sufficient funds are available to support ongoing contract funding needs. While the Budget does make distinctions, the bottom line purpose for both pots of money is similar if not identical. Basically, no critical need will be unmet because of the use of amendment funds to extend these contracts. There are sufficient funds available to meet all immediate fiscal year 1989 funding requirements. The funding will, however, result in a need for a comparable amount at some point in the future.

SENATOR MIKULSKI: What specific amendment activities did you anticipate last year that are not now taking place?

ANSWER: There is no specific change in amendment requirements from last year. The bottom line is that the term of amendments we offer this year will be shorter than they would have been had the funding not been required to extend the expiring contracts.

SENATOR MIKULSKI: Does the fact that last year's amendment figure was off by $100 million mean I can similarly reduce your 1990 amendment estimate to help fund some of the additional renewal costs?

ANSWER: In the short term, the answer to the question is probably yes. We would probably get by using very short-term amendments rather than amending for the remaining term of the increment. Obviously, shorter amendment terms in fiscal year 1990 will result in larger amendment requirements in future years as those short terms expire and need to be extended.

SENATOR MIKULSKI: I'd like you to provide the Committee, for the record, a detailed accounting of how the Department has used amendment money over the last 5 years, including FY 89 activity.

ANSWER:

Fiscal Year 1984:

| | |
|---|---|
| New Construction/Substantial Rehabilitation | $ 142,945,920 |
| Existing | 33,516,416 |
| Loan Management (incl. Project Reserves) | 122,254,119 |
| Moderate Rehabilitation | 32,001,939 |
| Subtotal | 330,718,394 |
| Section 8/202 | 170,717,030 |
| Total | 501,435,424 |

Fiscal Year 1985:

| | |
|---|---|
| New Construction/Substantial Rehabilitation | 101,040,225 |
| Existing | 203,530,952 |
| Loan Management (incl. Project Reserves) | 72,688,030 |
| Property Disposition | 5,522,460 |
| Moderate Rehabilitation | 26,178,160 |
| Subtotal | 408,959,827 |
| Section 8/202 | 199,436,755 |
| Total | 608,396,582 |

Fiscal Year 1986:

| | |
|---|---|
| New Construction/Substantial Rehabilitation | 15,535,540 |
| Existing | 419,395,680 |
| Loan Management (incl. Project Reserves) | 340,416,699 |
| Property Disposition | 13,953,660 |
| Moderate Rehabilitation | 37,804,840 |
| Subtotal | 827,106,419 |
| Section 8/202 | 167,446,040 |
| Total | 994,552,459 |

Fiscal Year 1987:

| | |
|---|---|
| New Construction/Substantial Rehabilitation | 3,679,530 |
| Existing | 419,765,182 |
| Loan Management (incl. Project Reserves) a/ | 313,854,170 |
| Property Disposition | 24,384,540 |
| Moderate Rehabilitation | 32,049,594 |
| Subtotal | 793,733,016 |
| Section 8/202 | 97,582,160 |
| Total | 891,315,176 |

Fiscal Year 1988:

| | |
|---|---|
| New Construction/Substantial Rehabilitation..... | 2,465,605 |
| Existing..... | 601,019,020 |
| Loan Management (incl. Project Reserves) a/..... | 236,044,600 |
| Property Disposition..... | 6,374,000 |
| Moderate Rehabilitation..... | 59,999,184 |
| Subtotal..... | 905,902,409 |
| Section 8/202..... | 139,867,640 |
| Total..... | 1,045,770,049 |

Fiscal Year 1989: b/

| | |
|---|---|
| New Construction/Substantial Rehabilitation..... | 10,000,000 |
| Existing..... | 708,800,405 |
| Loan Management (incl. Project Reserves) a/..... | 384,695,400 |
| Property Disposition..... | 23,660,395 |
| Moderate Rehabilitation..... | 46,500,816 |
| Subtotal..... | 1,173,657,016 |
| Section 8/202..... | 152,632,360 |
| Total..... | 1,326,289,376 |

a/ Also includes rent rebates.
b/ Estimated.

SENATOR MIKULSKI: Your revised renewal plan says certificate renewals need to be funded a year in advance if they expire in the first two months of the following fiscal year. If that's true - then why does your revised plan exclude all certificates that expire in the last two weeks of November 1990 - which is clearly in this two month grace period? Isn't it just to make sure that your plan fits into the "magic" $1.1 billion figure?

ANSWER: Certificate master contracts contain numerous funding increments which have been added over the years and have funds reserved, but not necessarily under contract to cover them for a specific period. The contracts are constructed to expire when the first increment expires and to obligate funds sufficient only to cover that term. The balance of funding reserved for the newer increments is reserved for the contract but is not obligated or available for use until the master contract is extended. Because the law requires that the initial lease between the certificate tenant and participating landlord must be for at least 1 year, the contract must always have at least 12 months remaining in order to obligate the required year funding to cover a new lease.

The critical action required is extension of all contracts 1 year prior to their expiration to allow for 12 months remaining at any time during the year. Our strategy for replacement in fiscal year 1990 calls for the extension, for at least 1 year, of all certificate master contracts which currently expire during fiscal year 1991. In addition, the Budget proposes to begin to provide new 5-year contracts for those increments contained in the expiring 1991 master contracts which will have run their full term (15 years) and need to be replaced. For purposes of timing, it is important that at least those expiring increments in contracts which expire during the first month of fiscal year 1991 should be refunded during fiscal year 1990. This will ensure that all funding actions can be completed on a timely basis. In calculating the refunding requirement, the Department found that the $1.1 billion included in both the Budget Resolution and the House Appropriations Bill could support slightly more than the October expirations. Since the certificate master contracts tend to be more complex than other Section 8 contracts, the Department decided to provide in fiscal year 1990 for the 5-year refunding of as many expiring certificate increments as possible within the $1.1 billion. This permits us to refund more than half of the certificates that have anniversary dates in November.

SENATOR MIKULSKI: Was the action driven by OMB?
ANSWER: No, the action was driven by funding requirements.

SENATOR MIKULSKI: Did HUD object to it?
ANSWER: No.

SENATOR MIKULSKI: Another foundation of your revised renewal estimate is that only those vouchers and loan management set asides which expire in the first month of the following fiscal year need to be funded in advance. Why do vouchers and loan management contracts need less time to renew than certificates? What information did you use to come up with the difference? Did you ask any PHA's what they thought?

ANSWER: As noted in our previous answer, the 1 month is also the critical minimum for certificates. However, since the master contract used under the certificate program is more complex than, for example, a loan management contract, we decided to apply any balance,

up to the $1.1 billion available for renewals in the Budget Resolution and House Bill to support certificate renewals. While we consulted with PHAs following the submissions of our proposal to Congress, we did not consult with them on this specific issue prior to the submission.

SENATOR MIKULSKI: GAO and the subcommittee staff have done a little consultation with the PHA's themselves. They were told that certificate and voucher renewals both need up to two months lead time. If that were true, wouldn't that add another 3,100 November 1990 units to your revised plan's total and an extra $80 million?

ANSWER: If 2 months were required more funding would be needed. However, as stated earlier the Administration believes 1 month will be sufficient.

SENATOR MIKULSKI: How do you account for the difference in opinion in length of time needed for early renewal of vouchers? Don't you perhaps need more work in this area before finalizing your opinion on it?

ANSWER: We are satisfied that the 1 month advance funding will provide sufficient time for both certificates and vouchers. We placed more funding in certificates in fiscal year 1990 because we believe the master contracts may be more complex to handle. However, 1 month is probably sufficient even for certificates.

SENATOR MIKULSKI: So in summing up your $1.1 billion solution, if--You added $100 million to replenish the '89 amendment pot; $200 million to make the 13,0000 2-year renewals 5-year renewals; $100 million to advance fund all the November 1990 certificates; and $80 million to do early voucher and loan management contracts like certificates. Your plan has a shortfall of roughly $500 million. Where would you get this $500 million, on top of the $400+ million you're already asking us for?

ANSWER: The Administration does not believe that the add-ons which you suggest are needed in fiscal year 1990. Therefore, we would not request this funding. If the Committee insists that such funding actions must be taken and provides the funding, we will, of course, abide by the directive.

COMMITTEE REPROGRAMMING GUIDELINES

SENATOR MIKULSKI: Let's return to the Department's failure to abide by our reprogramming guidelines. The use of amendment money for renewal-related activity is not the only recent violation of these guidelines. Didn't the Department use 1/6 of all the funds made available in FY 89 for new Section 8 certificates, $90 million, for project called "Operation Bootstrap"?

ANSWER: The response to this question is undergoing Departmental review and will be provided to the Subcommittee as soon as possible.

SENATOR MIKULSKI: Why wasn't the Committee notified about this activity - are those who are initiating these activities with HUD not consulting people in the Department, like the Budget Office, who would know about these things?

ANSWER: The response to this question is undergoing Departmental review and will be provided to the Subcommittee as soon as possible.

SENATOR MIKULSKI: Mr. Secretary, this Committee believes very strongly in having agencies abide by these guidelines. Do I have your assurances that you will do so in the future or do we need to place further statutory restrictions on the Department's appropriated funds?

ANSWER: The response to this question is undergoing Departmental review and will be provided to the Subcommittee as soon as possible.

SENATOR MIKULSKI: Does that mean that you will not use appropriated funds for new initiatives not provided for in appropriations acts without the express permission of the Committee?

ANSWER: The response to this question is undergoing Departmental review and will be provided to the Subcommittee as soon as possible.

SENATOR MIKULSKI: Are there any other new initiatives started on your watch - or any other activities in the Department which have violated the Committee's reprogramming guidelines?

ANSWER: The response to this question is undergoing Departmental review and will be provided to the Subcommittee as soon as possible.

COST OF VOUCHERS VERSUS CERTIFICATES

SENATOR MIKULSKI: Your latest renewal proposal shows the per unit cost of a certificate is $300 or 6% less per unit than that of a voucher. That's almost the same savings estimated by GAO in a report for the Subcommittee earlier this year, a report which HUD disagreed with saying vouchers were still less expensive than certificates. If renewal vouchers are $300 more expensive than certificates under your August 2nd proposal, why does the Department still estimate that new vouchers are $300 less expensive than new certificates? What accounts for this $600 per unit per year gap?

ANSWER: The Department did, in fact, disagree with the GAO conclusion and we continue to believe that the GAO conclusions were without solid basis. The GAO study looked at 1 year's cost experience under the two programs and used this 1 year difference to extrapolate a long-term cost differential between the two programs. We argued that looking at 1 year's worth of data was not a sound basis for making judgement on the relative costs of the two programs. We did not argue that vouchers were cheaper than certificates. Our assumption has been that there should be no significant cost difference between the two programs. We just recently have reviewed the second year costs for the two programs and the differences shown by GAO based upon first year costs have essentially evaporated. At least using second year costs, the program costs appear comparable.

The higher budget authority cost shown for vouchers reflects the statutory 15 percent add-on for increases in the payment standard during the 5-year term. For voucher renewal costs, we simply took the estimated fiscal year 1990 Budget cost and excluded any estimate for start up costs. We do not believe that vouchers will be more costly than certificates.

SENATOR MIKULSKI: In view of your new data, why not change your budgeting process so there is consistency in the voucher and certificate programs? How can you use 2 sets of numbers, one for renewals and one for incrementals, for what are essentially the same kinds of housing assistance?

ANSWER: The Department is looking at practical ways to reduce

the differences between certificates and vouchers. The costs currently being shown for incremental and renewal vouchers are the same except that the renewal estimates exclude a start-up fee.

SENATOR MIKULSKI: The Administration's position in the budget was to replace all expiring contracts with vouchers. GAO's report said to do so would cost up to $9.6 billion more for the taxpayer over the next 12 years. In light of your most recent data, does HUD still believe that expiring certificates should be converted to vouchers?

ANSWER: The Department disagrees with the GAO findings which developed estimates based upon extrapolating a 1-year cost difference over the full term of the contract. As we stated at the time to GAO, 1-year's worth of data is insufficient for purposes of making a valid program cost comparison. As we expected, the second year's data comparing the relative program costs essentially eliminated any significant difference. The two programs appear to cost about the same.

Since the costs appear to be comparable, we believe that the substantial flexibility and freedom of choice provided to voucher recipients provide vouchers with a significant advantage over certificates.

SENATOR MIKULSKI: Does that mean that 1991 and future years will show in-kind renewals, just like your revised plan suggests?

ANSWER: The Administration's fiscal year 1991 Budget proposals have not yet been developed. It is anticipated, however, that they will include replacement of all expiring Section 8 subsidies with new 5-year contracts.

SENATOR MIKULSKI: If certificates are 6% less expensive than vouchers to renew, why not covert vouchers to certificates?

ANSWER: As noted in previous answers, the Department believes, and current data indicate, that voucher and certificate costs are about identical. The voucher costs include a 15 percent statutory add-on to permit future increases to the payment standard. The methods for budgeting the two programs make comparisons difficult. The Department will try to rectify this problem.

MASTER CONTRACT EXTENSIONS

SENATOR MIKULSKI: One of the most confusing aspects of this entire debate has been the issue of master contract extensions. These contracts were first made by HUD with public housing authorities (PHA's) beginning in 1976 and they specified a number of units and a dollar amount. Is that correct?

ANSWER: Yes, that is correct.

SENATOR MIKULSKI: In years after 1976, instead of writing a new contract with a PHA for each new set of units it received, HUD simply added these new units and dollars available as an amendment to the master contract. Is that correct?

ANSWER: Yes, that is correct.

SENATOR MIKULSKI: Is it true that all of these master contracts expire in 1991, even though most of them have funds targeted for units which, if taken to term, would extend beyond 1991, in some cases, to more than a decade after then?

ANSWER: Not all master contracts expire in 1991. There are approximately 2,000 certificate master contracts covering over 870,000 certificates. During fiscal year 1991, 701 of these contracts covering approximately 497,000 certificates will expire. The 497,000 certificates on these contracts include approximately 136,000 which have run full term. The remaining 361,000 have reserved budget authority which can be used to extend the master contract.

SENATOR MIKULSKI: This seems like a confusing way to run a program. How did HUD develop this method of administering the Section 8 certificate program?

ANSWER: The master contract concept was developed to suit the design and operation of the certificate program. Under the certificate program, which is designed to provide a tenant-based rather than a project-based subsidy, the Federal Government enters into a contractual arrangement with public housing agencies to administer the program. The PHAs develop and manage lists of eligible participants, counsel participants, solicit owners to participate, inspect units selected by tenants and assist in negotiating rent contracts. Unlike a project-based program where subsidy is obligated for a specific structure, the certificate goes with the tenant and can be used in any eligible unit. The master contract was designed to facilitate PHA management of the program. There is no reason to distinguish between certificates provided in one year and certificates provided in another year. From the administering agency viewpoint, all certificates are the same and distinctions are unnecessary. By placing all certificates under one contract, the idea was to simplify PHA management and budgeting rather than force them to account for certificate costs associated with a large number of separate contracts. The master contract allows the PHA to submit one annual budget and one set of requisitions to cover costs for all the certificates it manages rather than requiring contract-by-contract payment requisitions.

SENATOR MIKULSKI: Since you've had time to review this method of administration, Mr. Secretary, do you think it is a good method for running the certificate program?

ANSWER: Actually, the master contract concept is a good, useful concept for a tenant-based program such as the certificate program. Our current problems are not the result of the master contract concept. We simply didn't have the good information available in past years to manage the program. The information deficiencies were such that individual contracts would not have reduced the difficulties and it is possible they may have added to the confusion.

During preliminary discussions with PHA officials and representatives from interest groups such as NAHRO and the Public Housing Authority Directors Association, the officials expressed support for a continuation of many of the features used in the master concept--a single certificate budget and a single requisition for quarterly payments. They recognize that a strict interpretation of separate contracts with contract by contract accounting could prove overly cumbersome, could complicate administration and result in little if any value.

The Department recognizes the statutory requirement to use individual contracts and is working with the authorities to develop a practical, workable format.

SENATOR MIKULSKI: I understand that this funding which exists in these master contracts for use beyond the contract's 1991 expiration date is called "reserved, but uncontracted." How much reserved but uncontracted budget authority exists in these master contracts, and how many units are they suppose to cover?

ANSWER: As of December 31, 1988, there was a total of $12.3 billion in the reserved, not under contract category. This amount represents future year funding for 853,875 certificates. One point of clarification--not all master contracts expire in fiscal year 1991. In fact, over 700 master contracts extend beyond fiscal year 1991.

SENATOR MIKULSKI: Please provide for the record how it breaks down by HUD regions.

ANSWER:

Section 8 Certificates--Reserved but Uncontracted Balances
(Data as of 12/31/88)

| Region | Certificates | Uncontracted Balances |
|---|---|---|
| Boston | 64,871 | $1,062,701,258 |
| New York | 121,655 | 1,896,469,513 |
| Philadelphia | 78,984 | 1,168,278,420 |
| Atlanta | 135,665 | 1,599,067,068 |
| Chicago | 94,356 | 1,277,686,279 |
| Dallas | 108,975 | 1,198,050,593 |
| Kansas City | 40,426 | 434,661,367 |
| Denver | 21,178 | 410,109,742 |
| San Francisco | 154,289 | 2,713,107,987 |
| Seattle | 33,476 | 538,096,464 |
| Total | 853,875 | 12,298,228,691 |

SENATOR MIKULSKI: Are there sufficient funds in this reserved, but uncontracted budget authority to fund the total number of units for which they were intended, to term?

ANSWER: Based upon our current estimates, some, but not all of the certificate master contracts have sufficient funding to support the full intended term of the original funding reservations. Using one set of assumptions, the aggregate resources needed to support full term funding is $23.6 billion compared to available resources of $22.1 billion--a net aggregate deficit of $1.5 billion. Reviewing each of the 2,379 contracts individually, 1,210 appeared to have more than sufficient funds to cover the full term of initial reservation for each increment while 1,169 contracts had a gross deficit of $3.8 billion.

In developing these estimates, we took each funding increment included under each master contract and ran costs out over the full intended term of the reservation using a 3 percent annual increase in the contract rate of disbursements. We aggregated the hypothetical runnout costs for each of these increments and compared the sum with the total currently reserved and obligated for each master contract.

SENATOR MIKULSKI: Your figures show that nationally you have a deficit surplus in this reserved, but uncontracted funding, of about $1.6 billion, there is not an even distribution of this deficit in all HUD Regions. How much amendment money will be needed to carry all of the units provided under the master contract to term?

ANSWER: We would not expect to see an even distribution of estimated contract surplus and deficit among the Regions. The adequacy of resources under any set of assumptions is highly sensitive to localized housing cost, rates of rental increase, tenant incomes and individual PHA certificate usage rates. To the extent rental costs are modest and the rate of rent increase in relation to the change in beneficiary incomes is reasonable surpluses may accrue. To the extent such surpluses materialize they can be used to offset net budget costs for replacement contracts at expiration of the initial reservation term. Where rents have risen rapidly in relation to tenant incomes we would expect to see deficits.

To the extent our current analysis of balances is reasonable, we would expect gross amendment needs over the full term of existing funding reservations to require $3.8 billion in gross amendment budget authority. The $1.6 billion figure noted in your question is a net deficit estimate which includes offsetting surpluses estimated for some of the contracts. Obviously, these are rough estimates and will change to the extent actual experience deviates from the assumptions used in the analysis.

SENATOR MIKULSKI: Congress originally provided funds for all of these units to last 15 years. In those contracts where you've now discovered there's a deficit, how many years of funding short are we?

ANSWER: While the reservation of funds is for a 15-year period, the adequacy of the funding to cover the full term depends upon contract rents, rate of rent increase, tenant income and other factors.

Certificate funds are reserved based upon the full first year rent or FMR. The actual subsidy payment in any year is based upon the full rent plus agency administrative costs offset by a tenant payment reflecting 30 percent of adjusted income. During the early contract years, this method generates surpluses which are placed in reserve to offset the need to amend the contract in later years as rent levels increase. However, this method of funding does not guarantee the sufficiency of subsidy for a 15-year period. That depends on the factors mentioned earlier plus others. In fact, the longer the term, the less likely this method is to provide sufficient subsidy.

It is difficult to accurately project the reservation term shortfall in years. However, based upon the estimated net deficit of $1.6 billion, we would be less than one-half year short to cover the full term.

SENATOR MIKULSKI: What accounts for this shortfall - Congress appropriated funds in a fashion that according to the Department's own estimates would last 15 years? What went wrong?

ANSWER: The reservation methodology as described in the answer to the previous question creates initial reserves which help to reduce shortfalls. However, the ability of the initial reservation to support a full 15 years (as it apparently does in some cases) is contingent upon local market factors and PHA issuing practices.

The certificate program is a tenant-based subsidy program rather than a project-based subsidy. As such, the tenant population turns over and shifts rapidly as do the units and owners who may be participating in the program at any given time. These program features substantially complicate the process of accurately estimating long-term funding commitments.

SENATOR MIKULSKI: Does the fact that a shortfall of $3.6 billion exists - that HUD's original estimates on what it would cost to fund these until the full 15 years were so far off - what does that say about how HUD calculates the per unit/per year cost for an assisted housing unit?

ANSWER: What it says is that it is extremely difficult and largely a matter of luck to accurately project costs at the front-end for a full 15 years in a tenant-based program like certificates. For a tenant-based program, a 15-year funding commitment serves no vital purpose except as a statement that the Federal involvement and commitment to subsidized housing needs to be a long-term one. From a practical standpoint, both this Administration as well as the prior Administration have committed in the Budget to an ongoing renewal of contracts as they expire. From this standpoint, the shorter term, 5-year contracts may prove easier to price accurately.

SENATOR MIKULSKI: Will going to a 5-year appropriation, instead of a 15-year appropriation, help improve the accuracy of predicting the cost of funding these units? If so, by how much?

ANSWER: We believe the shorter term contracts will result in a substantial reduction in the need for amendment funding. However, it is not feasible to estimate the amount of reduction at this time.

# QUESTIONS SUBMITTED BY SENATOR D'AMATO

## EXPIRING CONTRACTS

SENATOR D'AMATO: It is my understanding that under the current procedure, HUD requires funding to renew a Section 8 contract one year in advance. Why is this true?

ANSWER: We originally thought that expiring Section 8 certificate increments needed to be refunded a full year in advance but we no longer believe this is required.

The "year in advance" theory reflected our initial interpretation of the refunding process we would need to follow in order to accommodate the statutory requirement that all initial certificate leases must be for at least a 12-month period. If an administering agency's subsidy contract is set to expire in less than 12 months, it cannot re-use turnover certificates as they come available even if sufficient funds are available. The problem is one of timing of contracts. If the contract does not extend out at least 12 months then the tenant and owner could not sign the required 12 month lease.

As we investigated further, we discovered that PHA master contracts which expire because one increment under the contract needs to be replaced can still be extended a year at a time with funds already available for that purpose. As long as a rolling 12 months in advance is maintained, turnover certificates can be reissued and contract resources used effectively. The increment of certificates which has run its full term and needs replacement can be separated out from the master contract and refunded with much less than a year lead time.

SENATOR D'AMATO: It is my understanding that the Department has found a way to only require funding at this time for contract renewals for FY 1990 and only the first few months of FY 1991. What will happen to the renewals for the remaining months of FY 1991?

ANSWER: Those fiscal year 1991 expiring Section 8 contracts which are not refunded during fiscal year 1990 with new 5-year contracts will be refunded during fiscal year 1991--prior to expiration--with new 5-year contracts.

SENATOR D'AMATO: What is your overall strategy for attacking the Section 8 renewal problem? What is your overall strategy for attacking the prepayment problem?

ANSWER: The Administration is committed to the strategy of refunding all expiring Section 8 contracts with new 5-year contracts.

For subsidized projects which desire to prepay, the Department is currently complying with the provisions included in Title II of the Housing and Community Development Act of 1987 which authorizes the Department to offer owners a number of financial inducements to prevent prepayment and loss of the housing as a low-income housing resource. We also are working on an enhanced strategy for dealing with this issue and will submit our plan as part of the fiscal year 1991 Budget.

# QUESTIONS SUBMITTED BY SENATOR LEAHY

## EXPIRING CONTRACTS

SENATOR LEAHY: I have been impressed with your handling of the events and revelations of the past several months, and your energetic commitment to not only re-organizing, but moving ahead.

But I am disturbed by this latest problem, which puts this subcommittee in a real bind, to the tune of almost half a billion dollars in budget authority.

Why did it take until almost August 1 for the Department to realize that it had made such a gross error in what appears to me to be fairly straightforward accounting and data management functions? Why did the Department fail to simply know how many units it had under contract?

ANSWER: The problem involved our ability to obtain accurate data out of our systems in a timely manner. The information we needed for accurately projecting expiring contract needs is contained in a number of accounting and management systems which have evolved over the past several years. There is no one, integrated system which includes all the required data. Unfortunately, the systems are currently designed in a fashion that complicates the process of merging data from the assorted systems into a workable file which can be used for projection purposes. The process of downloading the data from the various systems, merging that data into workable files and analyzing the data took several months.

In addition, the Department had some initial questions on how much lead time is required for refunding prior to the actual expiration of the contracts. This is especially true under the certificate program where minimum lease requirements in the statute and the use of a master contract delayed our development of a workable strategy. It is not a question of the Department not knowing how many units are under contract, it is really an issue of the timing of refunding for those units. While this year's difficulties were unfortunate, we believe our current refunding strategy, this year's experience and problems and the changes we are making to prevent recurrence in the future should smooth out the process for next year.

SENATOR LEAHY: Why, when the problem was first detected in late July, was HUD's estimate of the error so much different than the one we have before us right now? (in late July, HUD told the subcommittee that it had underestimated the number of contracts requiring renewal by over 100,000--an almost $3 billion mistake!).

ANSWER: The initial set of options discussed with Congressional staff in late July included a number of potential refunding plans which were under review. The plans varied substantially in cost reflecting options on the length of the renewal term and the timing of renewals. The problem was not how many contracts expire and when they expire, that was not known. The problem really involved the length of lead time needed for refunding prior to the literal expiration of the funding increment.

There are a variety of complex procedures which govern the administration of the Section 8 subsidy contracts. For example, contracts which expire early in the first month of a fiscal year must be refunded in the previous year to ensure time is allowed for negotiation, processing and execution. In the case of loan management and vouchers, 1 month is the minimum time necessary. The situation for the certificate program is more complex.

The certificate program is more complex using a master contract approach. Under the master contract, as new certificates are provided to the administering housing authority, they are added by amending a single contract which contains all previously provided certificates. In this fashion, the authority does not need to manage separate pots of certificates segregated by the year in which they were provided. The approach is a sensible one from both HUD and the administering agency standpoint and should be easily manageable assuming an adequate data system is in place. Unfortunately, HUD has been slow in developing the necessary systems and only recently was able to collect the data needed to manage the contracts effectively. In addition, the statute prescribes that all initial certificate leases written between landlord and tenant must be for at least 12 months. This means that effective use of subsidy resources requires that HUD's contract with an administering agency at any given time must always extend at least 12 months. Otherwise, the authority cannot re-use certificates turned in as applicants drop out or move if they are to comply with the statutory minimum lease. We originally interpreted this to literally require that all expiring increments which are included in the master contracts must be extended 1 year prior to expiration. This resulted in the development of the option which you question. By funding all increments a full year in advance, the numbers of certificates refunded and the costs involved are substantially higher as noted in your question. However, after further investigation and review, HUD determined that full year in advance refunding of expiring increments was not necessary and developed the proposal now before the Subcommittee.

SENATOR LEAHY: Why given these mistakes, should we on the subcommittee rely on new HUD data figures? What has been done to correct the obvious problem?

ANSWER: Obviously, improved data and information on contracts should result in an improvement in future funding estimates. There is no question that our data systems have been inaccurate and still need improvement. We have been improving them and we intend to continue these efforts. The Under Secretary has been tasked with the project of correcting any deficiencies in our estimating procedures.

SENATOR LEAHY: I am concerned that, to correct the Administration's mistake, this subcommittee will need to look at trimming funds from other worthy, underfunded programs--like Community Development Block Grants, public housing modernization, funding new Section 8 existing units, etc.

Can you tell me if the Administration is willing to commit to make a budget request to replace this "replacement" budget authority that we must scrounge from somewhere--either as a supplement to the FY 90 budget, or for 91?

ANSWER: At this stage, a supplemental in fiscal year 1990 should not be required for this purpose. Our current estimate for budget authority to refund expiring Section 8 contracts in fiscal year 1990 ($1.1 billion) is consistent with the amounts included in both the Bipartisan Budget Agreement on the 1990 Budget and in the House Appropriations Bill for fiscal year 1990. Should the $1.1 billion prove inadequate, we will, of course, advise the Subcommittee.

DRUG ISSUES

SENATOR LEAHY: Mr. Secretary, stepping aside for a moment from the main subject of this hearing, I want to touch on an area that is on all our minds today--President Bush's national drug strategy.

Of course, drug abuse and violence in public housing--in the District, in Alexandria, and nationwide--has been widely discussed and well documented. Drug-related problems strike at the heart of our federal delivery system of decent, safe and affordable housing.

I was frankly disappointed to hear the President devote only a few sentences to drugs in public housing--and to hear him target only $50 million nationwide to such a deep-rooted problem.

From your months on the job, can you tell me what the Department is already doing to control drug use and violence in publicly-assisted housing?

ANSWER: In April 1989, I announced a ten-point plan to assist public housing agencies and their residents in their efforts to rid their communities of drug abuse and the criminal activity drugs generate. Below is a brief outline of that ten-point plan, and how it is being implemented:

1. Tightening security (Operation Take Charge, Washington, D.C.)

   The first point, increasing security in public housing developments, was targeted toward Washington, D.C.'s public housing. It is currently being implemented in the Arthur Capper project, with the results being determined. Phase 1 has been completed, which includes: certification of residents, issuance of photo identification, temporary perimeter fences and guards. Phase 2 has been initiated, which includes maintenance and repairs of occupied and vacant units.

2. Evictions

   A Notice of Termination of Public Housing Tenancy for Drug-Related Criminal Activity was published in the Federal Register on April 20. A total of 30 determinations have been made to date. Section 404 of the Supplemental Appropriations Act, which prohibits the eviction of all family/household members for the drug offenses of one member, hampers further action. I have notified the Appropriations Committees in both Houses of Congress that this Section should be repealed.

   It should be noted that President Bush's National Drug Control Strategy includes a request for the States to review their eviction procedures to bring them up to HUD due process requirements and to streamline eviction procedures.

3. Seizing Units Used for Drug Trafficking

   The Department is coordinating efforts with local U.S. Attorneys through the Department of Justice to seize units being used by drug traffickers. We have notified the Nation's public housing authorities of this opportunity.

4. Reclaiming Vacant Units

I am encouraging local housing authorities to initiate efforts to reclaim vacant units. All too often, public housing units are used as distribution or selling points for controlled substances.

5. Improving Housing Quality and Quality of Life

Improving housing quality is a vital component of my anti-drug strategy. Residents need to feel a sense of pride about themselves and where they live in order to resist the lure of drugs. Through a variety of HUD funding programs, we are seeking to improve the "livability" of public housing.

6. Hotlines/Central Information Sources

We will shortly initiate a national hotline to report drug offenses in public housing.

7. Resident Management and Other Empowerment/Prevention Programs

No anti-drug strategy for public housing will be truly effective without the active involvement of our residents. One of my priorities for the Department is to help spread resident management throughout our public housing communities. We have recently awarded 35 resident groups with grants to help develop resident management corporations.

8. Section 8 Termination

I recently instructed the public housing agencies on ways to use current Section 8 certificate rules to deny this assistance to persons engaged in illegal drug activity. I have drafted a proposed rule on denial of Section 8 certificates.

9. CIAP and Other Grant Sources

The Department recently issued a Notice on the use of Comprehensive Improvement Assistance Program funds for drug elimination activities.

The Department recently published in the Federal Register a Notice of Fund Availability for the $8.2 million in grants for Public and Indian Housing Agencies/Authorities authorized in the Anti-Drug Abuse Act of 1988.

10. Youth Programs

I feel very strongly that public housing's young people must be offered an alternative to drugs. I want to see sports activities and teams organized for our youth in public housing everywhere. The Department recently published a Notice of Fund Availability for using the Department's funds to meet this goal.

In addition to this ten-point plan, I have recently created an Office for Drug-Free Neighborhoods to coordinate the Department's efforts to achieve my priority for returning this Nation's communities to law-abiding residents. In this Office, the Department will provide policy direction, tools, skills, information and funding to HUD's Regional and Field staff, PHAs residents, and community leaders. This Office will be utilizing training, technical assistance, grants, the clearinghouse, and other supportive services to meet its goals.

SENATOR LEAHY: Will $50 million allow HUD to significantly extend and maximize its anti-drug efforts? How, as a practical matter will the money be spent? For neighborhood watch efforts in the projects? For intensified education efforts?

ANSWER: The activities eligible to receive funding for the $50 million are statutorily defined in the Anti-Drug Abuse Act of 1988. These seven activities include:

1. Security personnel.

   Security personnel may be employed to patrol public housing projects and to carry out drug-related security functions. Security personnel employed with assistance under this NOFA may respond to incidents that are not drug-related if they become aware of these incidents in the course of carrying out their drug-related duties. Any security personnel or investigators employed under this provision are required as a condition of employment to meet all relevant local, State or tribal training, licensing, or other similar requirements.

2. Additional security and protective services.

   Grant funds may be used to reimburse local law enforcement agencies for the cost of providing additional security and protective services for public housing projects. The Department construes "additional" to mean that Federal grant funds may not be used to supplant existing funding levels for security services to a project. Consequently, the security and protective services under this provision must be either:

   a. A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the NOFA's publication; or

   b. A quantifiable increase in the level of an ongoing service above which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee before the NOFA's publication.

   Services to be provided with grant funds should be over and above those for which the local government is already contractually obligated under its Cooperation Agreement with the PHA.

3. Physical improvements designed to enhance security.

The Act authorizes the use of grant funds for physical improvements specifically designed to enhance security in public housing projects. These improvements might include (but are not limited to) the installation of lighting systems, bolts or locks inside, on or on the grounds of, selected projects, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not use grant funds under the NOFA for any physical improvements that would result in the displacement of persons.

Because physical improvements of public housing projects are eligible under special purpose modernization and comprehensive modernization, the Department does not expect this program to be a primary vehicle for physical improvements.

4. Employment of investigators.

A PHA may employ individuals to investigate drug-related crime on or about the real property comprising the public housing project and to provide evidence relating to such crimes in any administrative or judicial proceedings. Investigators employed are required to meet any local, State or tribal licensing, training, or other similar, requirements.

5. Public housing tenant patrols.

A PHA may use grant funds to provide training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies.

6. Innovative programs to reduce the use of drugs.

"Innovative" means that the program uses a new or creative approach to accomplish this statutory objective. A PHA, Resident Management Corporation (RMC), or Resident Council (RC) may use grant funds under this Section to develop and operate, or to contract for services to provide, innovative drug education, intervention, referral, and outreach efforts. Grant funds may also be used for innovative strategies to prevent drug-related crime, including recreational, vocational, educational and other constructive alternatives for youth and families.

7. Resident Management Corporations and Resident Councils

Grant funds may be used by a grantee to RMCs and RCs to develop security and drug abuse prevention programs involving site residents. These programs may include (but are not limited to) the development of law enforcement strategies, drug education and treatment, counseling, referral, leadership training, security patrols, and outreach efforts.

SENATOR LEAHY: Are these really enough funds to get a jump on the problem?

ANSWER: During the span of less than 1 year, the Department has gone from spending no money directly on drug elimination activities, to the current $8.2 million, to the proposed $50 million. While the $8.2 million is a definite need in public housing, it was identified as a "Pilot" program so the Department can judge if the funds are being used in the most efficient and effective manner. Because of the short time involved in setting up the program, the Department and its Field Offices lack the capacity to absorb and properly allocate additional funding.

In addition, simply making the money available is not enough. We must continue developing the support systems and technical assistance needed to effectively use additional money.

SENATOR LEAHY: Also, it is my understanding that OMB Director Darman has proposed taking this $50 million for anti-drug efforts directly out of already underfunded public housing operating funds. Does it make any sense at all to further shortchange public housing management and maintenance like this, when lack of proper on-site management and maintenance already detract from the liveability and security of these housing complexes?

ANSWER: It is not my intention to deprive any existing programs of their needed resources. On the contrary, the $50 million Director Darman wishes to see spent on public housing drug elimination activities actually comes from an excess amount that the House proposed for operating subsidies, an amount $75 million above the Department's request. In essence, no funds are being shortchanged, rather, funding for operating subsidies over and above what is needed is being redirected into a program that will directly help our low-income residents.

In addition, 10 percent of HUD's $1.8 billion modernization funds are spent on the sort of expensive physical improvements needed to enhance security. We are encouraging PHAs to continue using modernization money to enhance physical security, and to use the $50 million for innovative prevention activities.

# QUESTIONS SUBMITTED BY SENATOR KERREY

## EXPIRING CONTRACTS

SENATOR KERREY: Secretary Kemp, do we have a budget amendment for the $1.1 billion you now project as needed in fiscal 1990?

ANSWER: No, a budget amendment should not be needed to support the expiring contract requirements in fiscal year 1990. Our current estimate ($1.1 billion) is consistent with the amounts included in both the Bipartisan Budget Agreement on the 1990 Budget and in the House Appropriations Bill for fiscal year 1990. Should the $1.1 billion prove inadequate, we will, of course, advise the Subcommittee.

SENATOR KERREY: You are requesting $1.1 billion for expiring Section 8 contracts--up from $667 million in the original budget submission. How much of the $1.1 billion is for contracts which expire in fiscal 1990 and how many of those contracts are involved and how much is for contracts which expire in the early part of fiscal 1991 and how many of those contracts are involved?

ANSWER: The distribution of fiscal year 1990 expiring contracts budget authority between contracts expiring in fiscal year 1990 and those expiring in fiscal year 1991 follows:

FISCAL YEAR 1990 EXPIRATIONS

| | Certificates | Vouchers | Loan Management | Total |
|---|---|---|---|---|
| | | (Dollars in Millions) | | |
| Units..... | ... | 13,927 | 5,021 | 18,948 |
| Budget Authority | ... | $376.0 | $120.1 | $496.1 |

FISCAL YEAR 1991 EXPIRATIONS (FUNDED IN FISCAL YEAR 1990)

| | Certificates | Vouchers | Loan Management | Total |
|---|---|---|---|---|
| | | (Dollars in Millions) | | |
| Units..... | 20,305 | 2,708 | 206 | 23,219 |
| Budget Authority | $517.8 | $73.1 | $5.0 | $595.9 |

TOTAL RENEWALS REFUNDED IN FISCAL YEAR 1990

| | Certificates | Vouchers | Loan Management | Total |
|---|---|---|---|---|
| | | (Dollars in Millions) | | |
| Units..... | 20,305 | 16,635 | 5,227 | 42,167 |
| Budget Authority | $517.8 | $449.1 | $125.1 | $1,092.0 |

SENATOR KERREY: Your statement refers to the need for funding for the early part of fiscal 1991, specifically October and early November. What is the rationale for covering the first six weeks? Does it relate to some conclusion regarding how long a lead time is necessary to renew the contracts or what?

ANSWER: The basic answer to the question is that lead time is required in order to ensure that there is no assistance lapse associated with the refunding process. The Department believes that 1 month should provide sufficient time to handle his problem. We provided a slightly longer lead time for certificate renewals (6 weeks) for two reasons:

1. Certificate contracts are more complex than voucher or loan management contracts so the slightly longer lead time provides a comfort zone; and

2. The Bipartisan Budget Agreement and the House Appropriations Bill contained $1.1 billion for this purpose and refunding now would reduce the requirement to refund next year.

SENATOR KERREY: Have PHAs been given any direction, either formal or informal, about how to handle expiring contracts?

ANSWER: On August 31, Secretary Kemp sent a memorandum to all Public Housing Agencies confirming the Administration's intention to replace all expiring certificate increments with new 5-year subsidy contracts. The memorandum advised the Agencies that specific instructions and procedures will be issued shortly.

SENATOR KERREY: How many contracts do you have expiring the first six weeks of fiscal 1990, which begins in less than a month, and how are you handling those?

ANSWER: A total of 1,323 loan management units expire during the first month of fiscal year 1990. These units were refunded in fiscal year 1989 pursuant to a reprogramming proposal approved by the Appropriations Committees.

SENATOR KERREY: For the record, what is the process for renewing a Section 8 contract--what must be done on a step-by-step basis and how long does it usually take?

ANSWER: The process for renewing a Section 8 certificate contract requires the following steps:

1. HUD Headquarters determines the required renewal funding and assigns funds to the HUD Regional Office.

2. The HUD Regional Office subassigns funds to the Field Office.

3. The Field Office prepares a Project Accounting Data (PAD) form for the renewal funding action and transmits it to the Regional Accounting Division which records a funds reservation for the PHA.

4. Field Counsel prepares the amended Consolidated Contract and it is sent to the Housing Authority for approval and signature.

5. The PHA returns the executed Consolidated ACC to the HUD Field Office for execution. It is then forwarded to the Regional Accounting Division with a Project Accounting Data form for the termination of the expiring contract and both actions are recorded in the accounting system.

For any given Certificate Contract renewal, the process requires approximately 6 to 8 weeks from the receipt of the Headquarters funding to ACC execution.

SENATOR KERREY: For the record, what are your current estimates of the number of expiring contracts in each of the next five fiscal years and what amount will be necessary to renew those for five years?

ANSWER: The current estimates for the numbers of expiring units and the cost of refunding those units with new 5-year contracts follows:

| Fiscal Year | Units | Budget Authority |
|---|---|---|
| | (Dollars in Millions) | |
| 1990 | 42,167 | $1,092.0 |
| 1991 | 329,294 | 8,663.3 |
| 1992 | 267,421 | 7,559.8 |
| 1993 | 190,018 | 5,652.3 |
| 1994 | 174,342 | 5,462.5 |
| 1995 | 173,216 | 5,712.0 |

CONCLUSION OF HEARING

Senator MIKULSKI. The subcommittee will stand in recess.

[Whereupon, at 11:50 a.m., Wednesday, September 6, the hearing was concluded, and the subcommittee was recessed to reconvene at the call of the Chair.]

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